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Nos. 99-244 and 99-253

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MARATHON OIL COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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JOINT APPENDIX

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December 30, 1999

PETITIONS FOR CERTIORARI FILED: AUGUST 10, 1999 (99-244) AND AUGUST 11, 1999 (99-253)
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UNITED STATES DISTRICT COURT
UNITED STATES COURT OF FEDERAL CLAIMS

Civil Case No. 92-CV-331

MARATHON [CONOCO]

v.

UNITED STATES OF AMERICA

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
5/7/92	1	COMPLAINT FILED FILING FEE $ 120 RECEIPT # 30332 Answer due on 7/6/92. (mm) [Entry date 11/22/93]
5/7/92	2	MOTION by CONOCO, INC. (Service : 5/7/92) for Notice to Third Parties [Chevron USA Inc.; Murphy Oil USA, Inc.; Odeco Il & Gas Co.; OXY USA Inc.; Pennzoil Exploration & Production Co.; Shell Offshore Inc.; Union Oil Co. of California; Amerada Hess Corp.; Marathon Oil Co.; Mobil Exploration & Producing U.S. Inc.] Copies (4) served on defendant. Response due: 5/24/92 (mm) [Entry date 11/22/93]
5/7/92	3	Notice of assignment to Judge Wilkes C. Robinson. Copy to parties. (mm) [Entry date 11/22/93]
6/16/92	4	ORDER entered directing the issuance of Rule 14 notices as specified in □[2-1] motion for Notice to Third Parties submitted (signed by Judge Wilkes C. Robinson) . Copy to parties. Notices issued this day and delivered to plaintiff's attorney for service. (mm) [Entry date 11/22/93]

DATE	NO.	PROCEEDINGS
10/28/92	5	THIRD-PARTY COMPLAINT (7 separate) by OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC. Service: 10/28/92 FILING FEE $ 120 for each RECEIPT # 32218-32224. Answer due 12/27/92 (mm) [Entry date 11/22/93] [Edit date 11/23/93]
12/10/92	6	THIRD-PARTY COMPLAINT (4 separate) FILED by AMOCO PRODUCTION, MOBIL EXPLORATION, SHELL FRONTIER OIL, and TEXACO EXPLORATION. Service: 10/28/92 FILING FEE $ 120 for each complaint. RECEIPT # 32728-32731. Answer due 12/27/92 (mm) [Entry date 11/23/93]
2/22/93	7	ORDER entered directing the Dismissing of third party plaintiff Mobil Exploration and Producing U.S., Inc. complaint without prejudice (signed by Judge Wilkes C. Robinson) . Copy to parties. (mm) [Entry date 11/23/93]
11/2/93	8	CORRECTED MOTION by USA (Service: 11/1/93) to Extend Time to complete discovery (to May 30, 1994) . Response due: 11/18/93 (mm) [Entry date 11/23/93]
11/10/93	9	MOTION by third party plaintiffs' AMERADA HESS CORP. et al (Service : 11/10/93) for Protective Order precluding certain depositions. Response due: 11/29/93 (mm) [Entry date 11/23/93]
11/12/93	—	Status Conference held (Transcript due 12/13/93) . (mm) [Entry date 12/06/93]

DATE	NO.	PROCEEDINGS
11/15/93	10	ORDER mooting [9-1] motion for Protective Order precluding certain depositions, granting in part, denying in part [8-1] motion to Extend Time to complete discovery reset Discovery deadline to 2/15/94, reset Dispositive Motion Filing deadline to 4/1/94 (signed by Judge Wilkes C. Robinson) . Copy to parties. (mm) [Entry date 11/23/93]
11/19/93	11	[Stipulated] MOTION by CONOCO, INC. and USA to Extend Time within which to respond to discovery requests, (until December 3, 1993) and reset Discovery deadline. Response due: 12/6/93. (hw) [Entry date 11/26/93]
12/1/93	12	ORDER granting [11-1] motion to Extend Time within which to respond to discovery requests, granting [11-2] motion to reset Discovery deadline. (signed by Judge Wilkes C. Robinson) Copy to parties. (ds) [Entry date 12/03/93]
12/1/93	13	TRANSCRIPT of proceedings re: 1 volume, at Washington, D.C., for date of November 12, 1993 . Notice to parties. (mm) [Entry date 12/06/93]
12/3/93	14	MOTION by CONOCO, INC., USA and AMERADA HESS CORP., ET AL. to Extend Time to respond to discovery requests (to December 22, 1993, for all parties). (bh) [Entry date 12/06/93]
12/3/93	15	MOTION by AMERADA HESS CORP. (Service: 12/3/93) for Protective Order. Response due: 12/20/93 (bh) [Entry date 12/06/93]

DATE	NO.	PROCEEDINGS
12/7/93	16	ORDER granting [15-1] motion for Protective Order and expanding the protective order of 9/3/93, to include attachment A to order. (signed by Judge Wilkes C. Robinson) Copy to parties. (ds) [Entry date 12/08/93]
12/7/93	17	SUPPLEMENTAL STIPULATED PROTECTIVE ORDER (signed by Judge Wilkes C. Robinson). Copy to parties. (ds) [Entry date 12/08/93] [Edit date 12/08/93]
12/7/93	18	ORDER granting [14-1] motion to Extend Time to respond to discovery requests (signed by Judge Wilkes C. Robinson) Copy to parties. (ds) [Entry date 12/98/93]
12/8/93	19	MOTION by AMERADA HESS CORP. (Service : 12/8/93) for Confidentiality Order, and to Expedite decision thereon. Response due: 12/27/93 (bh) [Entry date 12/09/93]
12/17/93	20	NOTICE of change of address by CONOCO, INC. Service: 12/17/93 (ds) [Entry date 12/20/93]
12/17/93	21	RESPONSE by USA to [19-1] motion for Confidentiality Order, [19-2] motion to Expedite decision thereon. Service: 12/17/93. Reply due: 1/3/94 (bh) [Entry date 12/20/93]
12/21/93	22	ORDER granting [19-1] motion for Confidentiality Order, granting [19-2] motion to Expedite decision thereon, with the Protective Order of 9/3/93 expanded to include Attachment A to [this] order. (Signed by Judge Wilkes C. Robinson) Copy to parties. (bh) [Entry date 12/23/93]

DATE	NO.	PROCEEDINGS
12/22/93	23	JOINT MOTION to Extend Time to respond to discovery requests (to January 15, 1994). (bh) [Entry date 12/30/93]
1/3/94	24	ORDER granting [23-1] joint motion to Extend Time to respond to discovery requests (signed by Judge Wilkes C. Robinson) Copy to parties. (hw) [Entry date 01/04/94]
1/14/94	25	MOTION by USA (Service : 1/14/94) to Amend answers to assert offset claims. Response due: 1/31/94 (bh) [Entry date 01/24/94]
1/14/94	26	JOINT MOTION to Extend Time for all parties to respond to one anothers' discovery requests (to January 31, 1994). (bh) [Entry date 01/24/94]
1/21/94	27	ORDER granting [26-1] joint motion to Extend Time for all parties to respond to one anothers' discovery requests. (signed by Judge Wilkes C. Robinson) Copy to parties. (bh) [Entry date 01/25/94]
1/26/94	28	MOTION by USA (Service : 1/26/94) to Compel production of documents. Response due: 2/14/94 (bh) [Entry date 02/01/94]
1/31/94	29	RESPONSE by CONOCO, INC., AMERADA HESS CORP. ET AL. to [25-1] motion to Amend answers to assert offset claims. Service: 1/31/94 [Reply date: 2/14/94] (bh) [Entry date 02/02/94]
2/14/94	30	RESPONSE by CHEVRON USA INC. to [28-1] motion to Compel production of documents. Service: 2/14/94 Reply due: 2/28/94 (bh) [Entry date 02/15/94]

DATE	NO.	PROCEEDINGS
2/14/94	31	MOTION by AMERADA HESS CORP., ET AL. (Service : 2/14/94) for Second Supplemental Protective Order. Response due: 3/3/94 (bh) [Entry date 02/15/94]
2/14/94	32	MOTION by USA (Service : 2/14/94) to Extend Time to reply to third-party plaintiff's discovery requests (to February 16, 1994). (bh) [Entry date 02/16/94]
2/14/94	33	MOTION by USA (Service : 2/14/94) to Extend Time to reply to plaintiff's discovery requests (to February 16, 1994). (bh) [Entry date 02/16/94]
2/14/94	34	MOTION by USA (Service : 2/14/94) to Extend Time to reply to the opposition to motion to amend answers (to February 16, 1994). (bh) [Entry date 02/16/94]
2/16/94	35	REPLY by USA to response to [25-1] motion to Amend answers to assert offset claims. Service: 2/16/94 (ds) [Entry date 02/17/94]
2/16/94	36	ORDER granting [34-1] motion to Extend Time to reply to the opposition to motion to amend answers set Notice of Compliance deadline to 2/16/94 (signed by Judge Wilkes C. Robinson) Copy to parties. (hw) [Entry date 02/22/94]
2/16/94	37	ORDER granting [32-1] motion to Extend Time to reply to third-party plaintiff's discovery requests. Deadline reset until February 16, 1994 (signed by Judge Wilkes C. Robinson). Copy to parties. (hw) [Entry date 02/22/94]

DATE	NO.	PROCEEDINGS
2/16/94	38	ORDER granting [33-1] motion to Extend Time to reply to plaintiff's discovery requests. Deadline reset until February 16, 1994 (signed by Judge Wilkes C. Robinson). Copy to parties. (hw) [Entry date 02/22/94]
2/16/94	39	ORDER granting [31-1] motion for Second Supplemental Protective Order (signed by Judge Wilkes C. Robinson). Copy to parties. (hw) [Entry date 02/22/94]
2/16/94	40	MOTION by USA (Service : 2/15/94) to Compel production of documents. Response due: 3/4/94. (hw) [Entry date 02/22/94]
2/23/94	41	MOTION by CONOCO, INC., AMERADA HESS CORP., ET AL. (Service by hand: 2/23/94) for Leave to File surreply memorandum in response to defendant's reply to opposition to motion for leave to amend answers to assert offset claims. Response due: 3/9/94 (bh) [Entry date 02/28/94]
2/28/94	42	MOTION by USA (Service : 2/28/94) to Extend Time to reply to CHEVRON'S opposition to motion to compel (to March 2, 1994). (bh) [Entry date 03/04/94]
3/1/94	43	REPLY by USA to response [by third party plaintiff, Chevron U.S.A.] to [28-1] motion to Compel production of documents. Service: 3/1/94. (hw) [Entry date 03/07/94]
3/3/94	44	ORDER scheduling oral argument for March 17, 1994 at 10:00 a.m. (signed by Judge Wilkes C. Robinson). Copy to all parties. (ds) [Entry date 03/08/94]

DATE	NO.	PROCEEDINGS
3/3/94	45	ORDER granting [41-1] motion for Leave to File surreply memorandum in response to defendant's reply to opposition to motion for leave to amend answers to assert offset claims. (signed by Judge Wilkes C. Robinson) Copy to parties. (ds) [Entry date 03/08/94]
3/3/94	46	SUR-REPLY MEMORANDUM by CONOCO, INC., OXY USA INC., ET AL. in response to USA's reply to opposition to motion for leave to amend answers to assert counterclaims. (ds) [Entry date 03/08/94]
3/4/94	47	MOTION by USA (Service : 3/4/94) to Withdraw [40-1] motion to Compel by USA. Response due: 3/21/94 (bh) [Entry date 03/09/94]
3/14/94	48	MOTION by USA (Service : 3/14/94) for modification of the order of briefing so that plaintiff's and third-party plaintiffs' dispositive motions be filed first, or in the alternative, to Extend Time to file dispositive motion (to April 15, 1994). Response due: 3/31/94 (bh) [Entry date 03/16/94]
3/16/94	49	MOTION by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION (Service: 3/16/94) for Leave to File stipulations and stipulation exhibits Response due: 4/2/93 (mm) [Entry date 03/21/94]

DATE	NO.	PROCEEDINGS
3/16/94	50	RESPONSE by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION to [48-1] motion for modification of the order of briefing, or in the alternative [48-2] motion to Extend Time to file dispositive motion Service: 3/16/94 Reply due: 3/28/94 (mm) [Entry date 03/22/94]
3/17/94	—	Oral Argument re: [41-1] motion for Leave to File surreply memorandum in response to defendant's reply to opposition to motion for leave to amend answers to assert offset claims. Response due: 3/9/94 by AMERADA HESS CORP., CONOCO, INC. (Transcript due 4/18/94) (mm) [Entry date 03/18/94]
3/18/94	51	ORDER granting in part, denying in part [48-1] motion for modification of the order of briefing; resetting Simultaneous Motions for Summary Judgment Filing deadline to 4/8/94; setting Joint Status Report deadline for 3/25/94; setting Supplemental Brief deadline to 4/1/94 for plaintiffs and third-party plaintiffs [defendant to respond 4/8/94] ; and setting Notice of Compliance deadline to 3/21/94 for CHEVRON to submit IN CAMERA documents to the court for inspection. (signed by Judge Wilkes C. Robinson) Copy to parties. (bh) [Entry date 03/23/94]
3/22/94	54	TRANSCRIPT of proceedings re: 1 volume, at Washington, D.C., for date of March 17, 1994 exhibits: . Notice to parties. (mm) [Entry date 04/01/94]

DATE	NO.	PROCEEDINGS
3/25/94	52	MOTION by USA (Service : 3/25/94) For leave to exceed the page limitation of its brief in support of its motion for summary judgment [totaling 100 pages]. (bh) [Entry date 03/29/94]
3/25/94	53	STATUS REPORT by CONOCO, INC., USA, OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, SHELL WESTERN E & P, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, MOBIL EXPL & PRODUC, MOBIL EXPLORATION Service: 3/25/94 (mm) [Entry date 03/29/94]
4/1/94	55	SUPPLEMENTAL BRIEF by CONOCO, INC., AMERADA HESS CORP., et al. re: AMERICOLD case. Service by hand: 4/1/94 (ds) [Entry date 04/02/94]
4/4/94	56	ORDER granting [52-1] motion For Leave to exceed the page limitation; and allowing all parties to expand their briefs up to 100 pages (signed by Judge Wilkes C. Robinson). Copy to parties. (ds) [Entry date 04/05/94]
4/7/94	57	MOTION by USA (Service : 4/7/94) to Extend Time for parties to file dispositive motions until April 12, 1994. Response due: 4/25/94 (rs) [Entry date 04/08/94]
4/8/94	58	Notice of filing proposed order by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL

DATE	NO.	PROCEEDINGS
		USA, INC., AMOCO PRODUCTION filed by leave of the judge. Service : 4/7/94 (mm) [Entry date 04/11/94] [Edit date 04/11/94]
4/8/94	59	RESPONSE by USA to [55-1] memorandum by AMERADA HESS CORP., CONOCO, INC., Service: 4/8/94 (mm) [Entry date 04/12/94]
4/11/94	60	ORDER granting [57-1] motion to Extend Time for parties to file dispositive motions set Motion Filing deadline to 4/12/94 (signed by Judge Wilkes C. Robinson). Copy to parties. (mm) [Entry date 04/12/94]
4/12/94	61	ORDER filed by leave of the judge. (mm) [Entry date 04/13/94]
4/12/94	62	MOTION by USA (Service: 4/12/94) for Summary Judgment, together with seven volumes of appendix. [Volume VII of Appendix placed IN CAMERA.] Response due: 5/13/94 (ds) [Entry date 04/14/94]
4/12/94	63	PROPOSED FINDINGS of Uncontroverted Fact by USA. Service: 4/12/94 [Volume II of Proposed Findings placed IN CAMERA.] (ds) [Entry date 04/14/94]
4/12/94	64	MOTION by CONOCO, INC. (Service: 4/12/94) for Summary Judgment, together with four separately bound volumes of exhibits [2 volumes of "Lease Sale" Exhibits; 2 volumes of "Post-Lease" "Moratoria" Exhibits]. Response due: 5/13/94 (ds) [Entry date 04/14/94]
4/12/94	65	PROPOSED FINDINGS of Uncontroverted Fact by CONOCO, INC. Service: 4/12/94 (ds) [Entry date 04/14/94]

DATE	NO.	PROCEEDINGS
4/12/94	66	MOTION by AMERADA HESS CORP. et al. (Service : 4/12/94) for Partial Summary Judgment. Response due: 5/13/94 (rs) [Entry date 04/14/94]
4/12/94	67	PROPOSED FINDINGS of Uncontroverted Fact by AMERADA HESS CORP., et al. Service: 4/12/94 (rs) [Entry date 04/14/94]
4/12/94	68	ORDER granting [49-1] motion for Leave to File stipulations and stipulation exhibits. (signed by Judge Wilkes C. Robinson) Copy to parties. (rs) [Entry date 04/14/94]
4/12/94	69	Stipulation of leases together with (FOUR (4) volumes of exhibits. [five parts total]. (rs) [Entry date 04/14/94]
4/21/94	70	ORDER entered scheduling a Status Conference for 10:00 a.m. on 4/26/94 (signed by Judge Wilkes C. Robinson) Copy to parties. (mm) [Entry date 04/28/94]
4/26/94	—	Status Conference held (Transcript due 5/26/94) (mm) [Entry date 04/29/94]
5/3/94	71	TRANSCRIPT of proceedings re: 1 volume, at Washington, D.C., for date of April 26, 1994. Notice to parties. (mm)
5/6/94	72	ORDER granting [28-1] motion to Compel production of documents; granting in part, denying in part [25-1] motion to Amend answers to assert offset claims; Responses to [66-1] [64-1] [62-1] motions for Summary Judgment reset to 5/24/94; Replies to responses [66-1] [64-1] [62-1] motions for Summary Judgment, reset to 6/17/94; defendant, plaintiff and 3rd party plaintiff allowed 65 pages for response briefs and 45 pages for reply briefs with plaintiff and 3rd party plaintiff given 100 pages total for both responses if they file them separately; and setting Answers and to assert offset claims deadline to 6/6/94 with plaintiff and 3rd party plaintiff to respond within 30 days from FILING. signed by Judge Wilkes C. Robinson) Copy to parties. (rs) [Entry date 05/16/94]

DATE	NO.	PROCEEDINGS
5/24/94	77	MOTION by USA (Service: 5/24/94) to Extend Time within which all parties may file their responses to dispositive motions, (until May 27, 1994) and to Extend Time within which all parties may file any replies to responses to their motions, (until June 20, 1994). Response due: 6/10/94 (hw) [Entry date 06/02/94]
5/27/94	74	RESPONSE by USA to [66-1] motion for Partial Summary Judgment, [64-1] motion for Summary Judgment; together with a separate volume of appendix. Service: 5/27/94; Reply due: 6/17/94 (per order of 5/6/94) (ds) [Entry date 06/02/94]
5/27/94	75	STATEMENT OF GENUINE ISSUES in response to Conoco's proposed findings of uncontroverted fact by USA. Service: 5/27/94 (ds) [Entry date 06/02/94]
5/27/94	76	STATEMENT OF GENUINE ISSUES in response to third party plaintiffs' proposed findings of uncontroverted fact by USA Service: 5/27/94 (ds) [Entry date 06/02/94]
6/1/94	78	STATEMENT OF GENUINE ISSUES by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COM-

DATE	NO.	PROCEEDINGS
		PANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, SHELL WESTERN E & P, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, MOBIL EXPL & PRODUC. and MOBIL EXPLORATION filed by leave of Judge. Service BY HAND: 5/27/94. (as) [Entry date 06/08/94]
6/1/94	79	STATEMENT OF GENUINE ISSUES [FILED UNDER SEAL] by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, SHELL WESTERN E & P, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, EXPL & PRODUC. and MOBIL EXPLORATION filed by leave of Judge. Service BY HAND: 5/27/94. (as) [Entry date 06/08/94]
6/1/94	80	RESPONSE by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, SHELL WESTERN E & P, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, MOBIL EXPL & PRODUC. and MOBIL EXPLORATION to

DATE	NO.	PROCEEDINGS
		[62-1] motion for Summary Judgment filed by leave of Judge. Service BY HAND: 5/27/94. Reply due: 6/7/94. (as) [Entry date 06/08/94] [Edit date 06/08/94]
6/2/94	81	ORDER granting [77-1] motion to Extend Time within which all parties may file their responses to dispositive motions, granting [77-2] motion to Extend Time within which all parties may file any replies to responses to their motions (signed by Judge Wilkes C. Robinson) Copy to parties. (tw) [Entry date 06/08/94]
6/2/94	—	Deadline updated; Reply to Response to Motion reset to 6/20/94 for [66-1] motion for Partial Summary Judgment, reset to 6/20/94 for [64-1] motion for Summary Judgment, reset to 6/20/94 for [62-1] motion for Summary Judgment (tw) [Entry date 06/08/94]
6/3/94	82	MOTION by USA (Service: 6/3/94) to Extend Time to file amended answers [to June 30, 1994]. (as) [Entry date 06/09/94]
6/9/94	83	ORDER granting [82-1] motion to Extend Time to file amended answers resetting Answers deadline to 6/30/94 (signed by Judge Marian B. Horn for Judge Robinson) Copy to parties. (rs) [Entry date 06/14/94]
6/17/94	84	MOTION by USA (Service: 6/17/94) to Extend Time to reply to oppositions to dispositive motions [to June 24, 1994]. (as) [Entry date 06/20/94]
6/21/94	85	ORDER granting [84-1] motion to Extend Time to reply to oppositions to dispositive motions Reply to Response to Motion reset to 6/24/94 for [66-1] motion for Partial

DATE	NO.	PROCEEDINGS
		Summary Judgment, reset to 6/24/94 for [64-1] motion for Summary Judgment, reset to 6/24/94 for [62-1] motion for Summary Judgment (signed by Judge Wilkes C. Robinson) Copy to parties. (ds) [Entry date 06/23/94]
6/24/94	86	REPLY by USA to response to [62-1] motion for Summary Judgment. Service: 6/24/94. (hw) [Entry date 06/27/94]
6/27/94	—	REPLY by CONOCO, INC. to response to [62-1] motion for Summary Judgment filed by leave of Judge. Service: 6/24/94. (as) [Entry date 06/29/94]
6/27/94	88	MOTION by USA (Service: 6/27/94) for Leave to File a corrected brief Response due: 7/14/94 (rs) [Entry date 06/29/94]
6/27/94	89	REPLY by CONOCO, INC. to response to [62-1] motion for Summary Judgment filed by leave of the judge. Service: 6/24/94 (mm) [Entry date 06/30/94]
6/27/94	90	REPLY by OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION to response to [62-1] motion for Summary Judgment filed by leave of the judge. Service: 6/24/94 (mm) [Entry date 06/30/94]
6/30/94	91	AMENDED ANSWER to Complaint by USA asserting offset claims: Service: 6/30/94 (rs) [Entry date 07/05/94]

DATE	NO.	PROCEEDINGS
7/5/94	92	ORDER granting [88-1] motion for Leave to File a corrected brief (signed by Judge Wilkes C. Robinson) Copy to parties. (rs) [Entry date 07/08/94]
7/5/94	93	CORRECTED REPLY BRIEF by USA to response to [62-1] motion for Summary Judgment. Service: 7/5/94 (rs) [Entry date 07/08/94]
7/8/94	94	SECOND AMENDED ANSWER to Complaint by USA: amends [91-1] answer by USA. Service: 7/8/94 (as) [Entry date 07/14/94]
7/29/94	100	RESPONSE by CONOCO, INC. to [91-1] answer by USA Service: 7/29/94 (rs) [Entry date 08/05/94]
8/1/94	95	RESPONSE by SHELL OFFSHORE, INC. to [94-1] answer by USA. Service: 8/1/94 (as) [Entry date 08/05/94]
8/1/94	96	RESPONSE by SHELL WESTERN E & P and SHELL FRONTIER OIL to [94-1] ansfer by USA. Service: 8/1/94 (as) [Entry date 08/05/94]
8/1/94	97	RESPONSE by OXY USA INC. to [94-1] answer by USA. Service: 8/1/94 (as) [Entry date 08/05/94]
8/1/94	98	RESPONSE by AMOCO PRODUCTION to [94-1] answer by USA. Service: 8/1/94 (as) [Entry date 08/05/94]
8/1/94	99	RESPONSE by MARATHON OIL COMPANY to [94-1] answer by USA. Service: 8/1/94 (as) [Entry date 08/05/94]
12/2/94	101	ORDER oral argument set for 10:00 1/31/95 for [66-1] motion for Partial Summary Judgment, [64-1] motion for Summary Judg-

DATE	NO.	PROCEEDINGS
		ment, [62-1] motion for Summary Judgment (signed by Judge Wilkes C. Robinson) Copy to parties. (rs) [Entry date 12/07/94]
12/23/94	102	MOTION by USA (Service: 12/23/94) for Leave to File a supplementary brief, etc. Response due: 1/9/95 (Supplemental brief included in motion for leave) (mp) [Entry date 12/30/94] [Edit date 01/23/95]
1/20/95	103	MOTION by OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION (Service: 1/20/95) for Leave to File a reply to defendant's supplemental brief Response due: 2/6/95 (mp) [Entry date 01/24/95]
1/20/95	104	ORDER granting [102-1] motion for Leave to File a supplementary brief, etc. (signed by Judge Wilkes C. Robinson) Copy to parties. (hw) [Entry date 01/25/95]
1/20/95	109	SUPPLEMENTAL PROPOSED FINDINGS of Uncontroverted Fact by USA. Service: 12/23/94 (mp) [Entry date 02/09/95]
1/26/95	105	MOTION by CONOCO, INC. and OXY USA INC., et al. (Service BY HAND: 1/26/95) for Leave to File notice of recent appellate opinions. Response due: 2/9/95 (as) [Entry date 01/31/95]
1/27/95	106	ORDER entered granting [103-1] motion for Leave to File a reply to defendant's supplemental brief (signed by Judge Wilkes C. Robinson) Copy to parties. (mp) [Entry date 02/01/95]

DATE	NO.	PROCEEDINGS
1/27/95	107	REPLY by OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION to response to [102-1] motion for Leave to File a supplementary brief, etc. Service: copy to defendant and plaintiff (mp) [Entry date 02/01/95]
1/30/95	108	MOTION by CONOCO, INC. (Service by hand: 1/30/95) for Leave to File a reply to defendant's supplementary brief and CONOCO's reply. Response due: 2/13/95 (hw) [Entry date 02/02/95]
1/31/95	—	Oral Argument held re: [66-1] motion for Partial Summary Judgment by AMERADA HESS CORP. (Transcript due 3/2/95), [64-1] motion for Summary Judgment by CONOCO, INC. (Transcript 3/2/95), [62-1] motion for Summary Judgment by USA (Transcript due 3/2/95) (mp) [Entry date 02/01/95]
2/9/95	110	TRANSCRIPT of proceedings re:, 1 volume, at Washington, D.C., for date of January 31, 1995. Notice to parties. (mp) [Entry date 02/10/95]
2/13/95	111	ORDER entered granting [105-1] motion for Leave to File notice of recent appellate opinions (signed by Judge Wilkes C. Robinson) Copy to parties. (mp) [Entry date 02/17/95]
2/13/95	112	NOTICE of recent applelate opinions by CONOCO, INC., OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEV-

DATE	NO.	PROCEEDINGS
		RON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION Service: 1/26/95 (mp) [Entry date 02/17/95]
3/8/95	113	MOTION by CONOCO, INC., AMERADA HESS CORP. (Service: 3/8/95) for Leave to File notice of recent Appellate Opinion. Response due: 3/27/95 (hw) [Entry date 03/13/95]
3/21/95	114	RESPONSE by USA (Service: 3/21/95) to [113-1] motion for Leave to File notice of recent Appellate Opinion, [108-1] motion for Leave to File a reply to defendant's supplementary brief and CONOCO's reply, [105-1] motion for Leave to File notice of recent appellate opinions Reply due: 4/3/95 (mp) [Entry date 03/23/95]
3/21/95	115	ORDER entered granting [113-1] motion for Leave to File notice of recent Appellate Opinion (signed by Judge Wilkes C. Robinson) Copy to parties. (mp) [Entry date 03/23/95]
3/21/95	116	NOTICE of recent Appellate Opinion by CONOCO, INC. Service: to plaintiff counsel. (mp) [Entry date 03/23/95]
3/27/95	117	ORDER entred [sic] granting [114-1] motion response (signed by Judge Wilkes C. Robinson). Copy to parties. (mp) [Entry date 03/30/95]
4/3/95	118	MOTION by CONOCO, INC., OXY USA INC., et al. (Service BY HAND: 4/3/95) for Leave to File reply to Defendant's post argument submission. Response due: 4/17/95 (as) [Entry date 04/05/95]

DATE	NO.	PROCEEDINGS
4/6/95	119	ORDER granting [118-1] motion for Leave to File reply to Defendant's post argument submission (signed by Judge Wilkes C. Robinson). Copy to parties. (ss) [Entry date 04/10/95]
4/11/95	120	MOTION by USA (Service: 4/11/95) to Suspend the issuance of a decision by the court on the parties motions for summary judgment Response due: 4/28/95 (mp) [Entry date 04/13/95]
4/17/95	121	RESPONSE by OXY USA INC., AMERADA HESS CORP., et al. (Service: 4/17/95) to [120-1] motion to Suspend the issuance of a decision by the court on the parties motions for summary judgment. Reply due: 5/1/95 (as) [Entry date 04/19/95]
4/17/95	122	RESPONSE by CONOCO, INC. (Service BY HAND: 4/17/95) to [120-1] motion to Suspend the issuance of a decision by the court the parties motions for summary judgment. Reply due: 4/26/95 (as) [Entry date 04/19/95]
4/18/95	123	MOTION by SHELL WESTERN E & P, SHELL OFFSHORE INC., SHELL FRONTIER OIL (Service: 4/18/95) to substitute attorney (consented) Terminated attorney E. Edward Bruce for SHELL FRONTIER OIL, attorney E. Edward Bruce for SHELL OFFSHORE INC., attorney E. Edward Bruce for SHELL WESTERN E & P Added Michael E. Coney. (mp) [Entry date 04/20/95]
4/18/95	124	JOINT MOTION by SHELL WESTERN E & P, SHELL OFFSHORE INC., SHELL FRONTIER OIL to Dismiss (mp) [Entry date 04/20/95]

DATE	NO.	PROCEEDINGS
4/21/95	125	UNPUBLISHED DECISION granting [124-1] joint motion to Dismiss (signed by Judge Wilkes C. Robinson). Copy to parties. (as)
4/26/95	126	REPLY by USA to response to [120-1] motion to Suspend the issuance of a decision by the court on the parties motions for summary judgment. Service: 4/26/95 (as) [Entry date 05/01/95]
5/1/95	127	ORDER denying [120-1] motion to Suspend the issuance of a decision by the court on the parties motions for summary judgment (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 05/03/95]
5/1/95	128	MOTION by AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, SHELL WESTERN E & P, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, MOBIL EXPL & PRODUC, MOBIL EXPLORATION (Service: 5/1/95) for Leave to File surreply memorandum. Response due: 5/18/95. (as) [Entry date 05/03/95]
5/4/95	129	ORDER granting [128-1] motion for Leave to File surreply memorandum (signed by Judge Wilkes C. Robinson) Copy to parties. (hw) [Entry date 05/08/95]
5/4/95	130	SURREPLY MEMORANDUM by CONOCO, INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION re: [126-1] motion reply by USA Service: 5/4/95 (hw) [Entry date 05/08/95]

DATE	NO.	PROCEEDINGS
6/20/95	131	MOTION by OXY USA INC. (Service: 6/19/95) to substitute attorney (consented) Terminated attorney E. Edward Bruce for OXY USA INC. Added Thomas Lee Byers. (mp) [Entry date 06/22/95]
6/20/95	132	JOINT MOTION by USA, OXY USA INC. to Dismiss (mp) [Entry date 06/22/95]
6/23/95	133	ORDER granting [132-1] joint motion to Dismiss (signed by Judge Wilkes C. Robinson) Copy to parties. (ds) [Entry date 06/26/95]
6/23/95	134	JUDGMENT entered pursuant to Rule 54(b) dismissing, with prejudice, all the claims and complaints of OXY USA, Inc., related to the North Carolina and Florida leases, and also dismissing, without prejudice, the offset claim of the United States (signed by Clerk). Copy to parties. (tw) [Entry date 07/05/95]
7/7/95	135	MOTION by SHELL WESTERN E & P, SHELL OFFSHORE INC., SHELL FRONTIER OIL (Service: 7/7/95) to substitute attorney (consented) Terminated attorney Michael E. Coney for SHELL FRONTIER OIL, SHELL OFFSHORE INC., and SHELL WESTERN E & P Added E. Edward Bruce. (ds) [Entry date 07/17/95]

DATE	NO.	PROCEEDINGS
7/14/95	136	MOTION by USA (Service: 7/14/95) for Leave to File joint notification of settlement discussions, and notice. Response due: 7/31/95. (hw) [Entry date 07/18/95]
7/19/95	137	MOTION by USA (Service: 7/19/95) for Leave to File additional joint notification of progress of settlement discussions. (as) [Entry date 07/21/95]
7/19/95	138	ORDER granting [136-1] motion for Leave to File joint notification of settlement discussions, and notice (signed by Judge Wilkes C. Robinson). Copy to parties. (mp) [Entry date 07/24/95]
7/21/95	139	ORDER granting [137-1] motion for Leave to File additional joint notification of progress of settlement discussions (signed by Judge Wilkes C. Robinson) Copy to parties. (hw) [Entry date 07/25/95]
7/28/95	140	Stipulation by PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, TEXACO EXPLORATION and USA of agreement for judgment entry. (as) [Entry date 08/01/95]
7/28/95	141	JOINT MOTION by USA and SHELL OFFSHORE INC. to Dismiss. (as) [Entry date 08/01/95]
7/31/95	142	MOTION by AMERADA HESS CORP. (Service BY HAND: 7/31/95) for Leave to File memorandum re: litigation status. Response due: 8/14/95 (as) [Entry date 08/04/95]

DATE	NO.	PROCEEDINGS
7/31/95	143	MOTION by AMERADA HESS CORP. (Service: 7/31/95) for Leave to File proposed order. (ss) [Entry date 08/04/95]
8/1/95	144	Stipulation by CONOCO, INC. and USA of agreement for judgment's entry. (as) [Entry date 08/04/95]
8/7/95	145	UNPUBLISHED DECISION granting [144-1] stipulation and directing Clerk to enter judgment accordingly (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 08/08/95]
8/7/95	146	ORDER granting [141-1] joint motion to Dismiss (signed by Judge Wilkes C. Robinson). The Clerk is directed to dismiss with prejudice the claims specifically listed on the 7/28/95 joint motion to dismiss. Copy to parties. (ss) [Entry date 08/09/95]
8/7/95	147	ORDER granting [140-1] stipulation. The Clerk is directed to enter judgment according to the 7/28/95 stipulation (signed by Judge Wilkes C. Robinson). Copy to parties. (ss) [Entry date 08/09/95]
8/7/95	148	ORDER granting [142-1] motion for Leave to File memorandum re: litigation status (signed by Judge Wilkes C. Robinson). Copy to parties. (ss) [Entry date 08/09/95]
8/8/95	149	ORDER granting [143-1] motion for Leave to File proposed order (signed by Judge Wilkes C. Robinson). Copy to parties. (ss) [Entry date 08/09/95]
8/8/95	150	JUDGMENT entered pursuant to Rule 54(b) awarding third-party plaintiffs the sums as set forth in the July 28, 1995, stipulation for

DATE	NO.	PROCEEDINGS
		compromise settlement and entry of final judgment under RUSCFC 54(b). (See stipulation in file) (signed by Clerk). Copy to parties. (tw) [Entry date 08/10/95]
8/8/95	153	CERTIFIED TRANSCRIPT OF JUDGMENT awarding the third-party plaintiffs picked up by John Stephan this date. (See letter of authorization from attorney of record in file.) (tw) [Entry date 08/15/95]
8/9/95	151	JUDGMENT entered pursuant to Rule 54(b) dismissing, with prejudice, all the remaining claims related to the interest of Shell Offshore Inc. ("SOI"), which were excluded from the Court's order of April 21, 1995, specifically those which relate to SOI's interests in the leases as listed in the July 28, 1995, joint motion to dismiss. (See stipulation in file.) (signed by Clerk). Copy to parties. (tw) [Entry date 08/10/95]
8/10/95	152	JUDGMENT entered pursuant to Rule 58 awarding plaintiff, Conoco Inc., the sum of $16,917,413.34 in complete adjudication of all the claims of Conoco Inc. that are the subject of this case. If said amount is not paid within forty (40) days after the date hereof, it shall bear interest dating from the date hereof until payment under the rate specified in 41 U.S.C. ss 611. Payment of said Judgment shall be made to Conoco by wire transfer of immediately available funds to: Morgan Guaranty Trust Company, 60 Wall Street, New York, New York, ABA No. 023100238, Account No. 7341-00-006 (Conoco Inc.). The offset claims of the United States as made in its Amended Answer dated January 14, 1994, are hereby dismissed without prejudice (signed by Clerk). Copy to parties. (tw)

DATE	NO.	PROCEEDINGS
8/10/95	154	CERTIFIED TRANSCRIPT OF JUDGMENT forwarded to attorney of record. See letter in file. (tw) [Entry date 09/05/95]
9/7/95	155	MOTION by AMERADA HESS CORP. (Service BY HAND: 9/7/95) for Leave to File appellate opinion. Response due: 9/21/95 (as) [Entry date 09/11/95]
9/11/95	156	MOTION by USA (Service: 9/11/95) for Leave to File response (by September 29, 1995) regarding recent appellate opinion (WINSTAR). Response due: 9/28/95. (hw) [Entry date 09/14/95]
9/14/95	157	RESPONSE by CONOCO, INC. (Service: 9/14/95 by hand) to [156-1] motion for Leave to File response (by September 29, 1995) regarding recent appellate opinion (WINSTAR). Reply due: 9/25/95 (ss) [Entry date 09/19/95]
9/18/95	158	ORDER granting [155-1] motion for Leave to File appellate opinion (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 09/20/95]
9/18/95	159	ORDER granting [156-1] motion for Leave to File response (by September 29, 1995) regarding recent appellate opinion (WINSTAR) (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 09/20/95]
9/29/95	160	MEMORANDUM by USA re: [159-1] order [effects of Appeals decision in Winstar]. Service: 9/29/95 (as) [Entry date 10/04/95]

DATE	NO.	PROCEEDINGS
10/5/95	161	RESPONSE by CONOCO, INC. to [160-1] memorandum by USA [filed by leave of the Judge]. Service: 10/2/95. (hw) [Entry date 10/11/95]
11/3/95	162	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $2,249,818.00 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
11/3/95	163	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $20,038,839.00 was Paid by Treasury Dept.: August 25, 1995 (as) [Entry date 11/09/95]
11/3/95	164	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $65,085,621.00 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
11/3/95	165	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $37,924,432.00 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
11/3/95	166	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $2,844,123.00 was paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
11/3/95	167	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $4,085,402.00 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]

DATE	NO.	PROCEEDINGS
11/3/95	168	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $8,681,909.00 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
11/3/95	169	G.AO. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $34,089, 856.00 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
11/3/95	170	G.A.O. Certificate of Settlement Number: Z-2897391, Dated: August 23, 1995 in the Amount: $16,917,413.34 was Paid by Treasury Dept.: August 25, 1995. (as) [Entry date 11/09/95]
12/12/95	171	MOTION by USA (Service: 12/12/95) for Leave to File additional commentary on Winstar. Response due: 12/29/95 (as) [Entry date 12/14/95]
1/2/96	172	RESPONSE by CONOCO, INC. (Service: 12/20/95) to [171-1] motion for Leave to File additional commentary on Winstar. (Filed by leave of the Judge), Reply due: 1/5/96 (st) [Entry date 01/05/96]
1/24/96	173	MOTION by USA (Service : 1/24/96) for Leave to File joint notification of progress of settlement discussions, and notices. Response due: 2/12/96. (hw) [Entry date 01/31/96]
1/29/96	174	MOTION by USA (Service : 1/29/96) for Leave to File reply to response to its supplemental report, (by leave of the Judge). Response due: 2/12/96. (hw) [Entry date 02/05/96]

DATE	NO.	PROCEEDINGS
1/31/96	175	ORDER granting [173-1] motion for Leave to File joint notification of progress of settlement discussions and notices (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 02/07/96]
2/8/96	176	RESPONSE by AMERADA HESS CORP., MARATHON OIL COMPANY, MOBIL OIL CORP. and MOBIL EXPL & PRODUC (Service: 1/31/96) to [173-1] motion for Leave to File joint notification of progress of settlement discussions and notices by leave of the Judge. (as) [Entry date 02/13/96]
3/6/96	177	MOTION by USA (Service : 3/6/96) for Leave to File joint notification of progress of settlement discussions, and notice, (hw) [Entry date 03/11/96]
3/14/96	178	PUBLISHED DECISION granting [66-1] motion for Partial Summary Judgment, granting [64-1] motion for Summary Judgment and denying [62-1] motion for Summary Judgment (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 03/21/96]
3/26/96	179	MOTION by USA (Service : 3/26/96) for Reconsideration/Rehearing Pursuant to Rule 59 re: [178-1] order. (ss) [Entry date 04/01/96]
4/1/96	180	ORDER Response to [179-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [178-1] order reset to 4/15/96 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 04/04/96]
4/1/96	181	PUBLISHED DECISION granting [66-1] motion for Partial Summary Judgment on breach of contract claims, denying [62-1]

DATE	NO.	PROCEEDINGS
		motion for Summary Judgment and for summary judgment on the Fifth Amendment taking issue and Withdrawing and substituting [178-1] order with said decision (signed by Wilkes C. Robinson). Copy to parties. (as) [Entry date 04/04/96]
4/15/96	182	RESPONSE by AMERADA HESS CORP. (Service: 4/15/96) to [179-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [178-1] order. (ss) [Entry date 04/18/96]
4/19/96	183	MOTION by AMERADA HESS CORP. (Service : 4/19/96) for entry of final judgment. Response due: 5/6/96 (ss) [Entry date 04/24/96]
4/26/96	184	ORDER denying [179-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [178-1] order (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 05/01/96]
5/1/96	185	MOTION by USA (Service: 5/1/96) to Strike [183-1] motion for entry of final judgment by AMERADA HESS CORP., or in the alternative to Stay consideration of that motion until after the status conference specified by the court in its 3/14/96 decision is held, or in the alternative to Extend Time to respond to motion requests extension of 28 days from the date of the order. Response date: 5/20/96. (st) [Entry date 05/06/96] [Edit date 05/06/96]
5/3/96	186	RESPONSE by CONOCO, INC. (Service: 5/3/96) to [185-1] motion to Strike [183-1] motion for entry of final judgment by AMERADA HESS CORP. Reply due: 5/15/96 (ss) [Entry date 05/08/96]

DATE	NO.	PROCEEDINGS
5/7/86	187	ORDER returning defendant's motion for leave to file a reply to plaintiff's response to defendant's motion for reconsideration [moot] (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 05/10/96]
5/9/96	188	ORDER scheduling Status Conference for 10:00am, 5/16/96 (signed by Judge Wilkes C. Robinson) Copy to parties. (hw) [Entry date 05/14/96]
5/9/96	189	ORDER denying [183-1] motion for entry of final judgment. The court shall proceed with a formal status conference, to be scheduled (signed by Judge Wilkes C. Robinson). Copy to parties. (ss) [Entry date 05/14/96]
5/16/96	190	ORDER set joint Status Report deadline to 6/17/96 and set third party plaintiff's Motion Filing deadline to 6/24/96 (signed by Judge C. Robinson). Copy to parties. (as) [Entry date 05/20/96]
5/16/96	—	Status Conference held. (Transcript due 6/17/96) (ss) [Entry date 05/21/96]
5/23/96	191	TRANSCRIPT of proceedings re: 1 volume, at Washington, D.C., for date of May 16, 1996. Notice to parties. (ss) [Entry date 05/29/96]
6/14/96	192	MOTION by OXY USA INC., AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, MOBIL EXPL & PRODUC, MOBIL EXPLORA-

DATE	NO.	PROCEEDINGS
		TION (Service: 6/14/96) to Extend Time to file a motion of reconsideration until 7/8/96. Response due: 7/1/96 (st) [Entry date 06/18/96]
6/18/96	193	ORDER granting [192-1] motion to Extend Time to file a motion of reconsideration, reset Status Report deadline to 7/1/96 and reset Motion Filing deadline to 7/8/96 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 06/20/96]
6/27/96	197	NOTICE of change of address by Mark Arnold Melnick □ (rs) [Entry date 07/11/96]
6/28/96	194	MOTION by CONOCO, INC. (Service : 6/28/96) to Extend Time Response due: 7/15/96 (hw) [Entry date 07/03/96]
6/28/96	195	MOTION by CONOCO, INC. and AMERADA HESS CORP., et al. (Service: 6/28/96) to Extend Time within which to file a joint status report and proposal for further proceedings [until 7/15/96]. (tw) [Entry date 07/03/96]
7/2/96	196	ORDER granting [195-1] motion to Extend Time within which to file a joint status report and proposal for further proceedings, reset Status Report deadline to 7/8/96 and reset Motion Filing deadline to 7/15/96 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 07/10/96]
7/5/96	198	MOTION by USA (Service: 7/5/96) to Extend Time to file proposed schedules for further proceedings until 7/10/96. Response due: 7/22/96 (st) [Entry date 07/11/96]
7/10/96	199	Joint STATUS REPORT by USA, AMERADA HESS CORP., PENNZOIL EXPLORATION, UNION OIL COMPANY, CHEV-

DATE	NO.	PROCEEDINGS
		RON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION, TEXACO INC., MOBIL OIL CORP., MOBIL OIL EXPLOR, SHELL WESTERN E & P, SHELL OFFSHORE INC., TEXACO EXPLORATION, SHELL FRONTIER OIL, MOBIL EXPL & PRODUC and MOBIL EXPLORATION. Service: 7/10/96. (hw) [Entry date 07/15/96]
7/10/96	200	MOTION by AMERADA HESS CORP., UNION OIL COMPANY, CHEVRON USA INC., MARATHON OIL COMPANY, MURPHY EXPLORATION, AMOCO PRODUCTION, MOBIL EXPL & PRODUC (Service: 7/10/96) For reconsideration of [189-1] order under Rule 83.2. (as) [Entry date 07/15/96]
7/17/96	201	ORDER Response to [200-1] motion For reconsideration of [189-1] order under Rule 83.2 set to 7/31/96 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 07/19/96]
7/30/96	202	MOTION by USA (Service : 7/30/96) to Extend Time within which to respond to motion for reconsideration, (until August 6, 1996). Response due: 8/16/96. (hw) [Entry date 08/05/96]
8/1/96	203	ORDER granting [202-1] motion to Extend Time within which to respond to motion for reconsideration and Response to [200-1] motion For reconsideration of [189-1] order under Rule 83.2 reset to 8/6/96 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 08/07/96]

DATE	NO.	PROCEEDINGS
8/6/96	204	RESPONSE by USA (Service: 8/6/96) to [200-1] motion For reconsideration of [189-1] order under Rule 83.2. Reply due: 8/19/96 (ss) [Entry date 08/12/96]
8/20/96	205	REPLY by OXY USA INC., et al. to response to [200-1] motion For reconsideration of [189-1] order under Rule 83.2 by leave of the Judge. Service: 8/15/96 (as) [Entry date 08/26/96]
9/6/96	206	ORDER denying [200-1] motion For reconsideration of [189-1] order under Rule 83.2. The parties shall file a joint proposed schedule for further proceedings within thirty days (signed by Judge Wilkes C. Robinson). Copy to parties. (hw) [Entry date 09/14/96]
9/24/96	207	Stipulation by USA, UNION OIL COMPANY, CHEVRON USA INC., MURPHY EXPLORATION, MURPHY OIL USA, INC., AMOCO PRODUCTION of settlement and compromise. (as) [Entry date 09/30/96]
10/2/96	208	UNPUBLISHED DECISION (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 10/04/96]
10/3/96	209	PARTIAL JUDGMENT entered pursuant to Rule 58, that third party plaintiff, Amoco Production Company shall recover of and from the United States the sum of $3,603,-874.00 payable by wire to Chase Manhattan Bank, New York, NY, ABA #021000021, for credit to Amoco Production Company, Account #9102499747; that third party plaintiff, Chevron U.S.A. Inc., shall recover of and from the United States the sum of $23,496,100.00 payable by wire to First National Bank of Chicago, Ilinois, ABA #071-000013, for credit to Chevron U.S.A. Oil & Gas, Account # 59-51704; that third party

DATE	NO.	PROCEEDINGS
		plaintiff, Murphy Exploration Production Company shall recover of and from the United States the sum of $2,656,584.00 payable by wire to First National Bank of El Dorado, Arkansas, ABA #082900911, for credit to Murphy Exploration & Production Company, Account #472884 and third party plaintiff, Union Oil Company of California shall recover of and from the United States the sum of $11,865,803.00 payable by wire to Northern Trust Co., Chicago, Illinois, ABA #071000152, for credit to Union Oil Company of California, Account #247731. The judgment entered herein shall bear interest, dating from sixty (60) days from the date that is is submitted by subject third party plaintiffs for payment until payment, under the rate specified in 41 U.S.C. Subsection 611 (signed by Clerk). Copy to parties. (as) [Entry date 10/07/96] [Edit date 10/07/96]
10/4/96	210	CERTIFIED TRANSCRIPT OF JUDGMENT picked up in person by attorney of record. See letter in file. (as) [Entry date 10/07/96]
10/7/96	211	Joint Additional Documentation [proposed schedule for further proceedings]. (as) [Entry date 10/09/96]
10/8/96	212	ORDER set Joint Proposed Discovery deadline to 10/28/96 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 10/09/96]
10/28/96	213	Additional Documentation [joint proposal for scheduling]. (as) [Entry date 11/05/96]
11/8/96	214	Stipulation of agreement pursuant to RUSCFC 54(b). (as) [Entry date 11/13/96]

DATE	NO.	PROCEEDINGS
11/13/96	215	UNPUBLISHED DECISION (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 11/15/96]
11/14/96	216	SCHEDULING ORDER setting Pretrial Conference for 10:00 a.m. on 4/18/97; Third Party Plaintiff's Appendix G deadline on on 2/28/97 and 3/14/97, and expert witnesses list no later than 2/14/97; Defendant's Appendix G deadline on 4/11/97; Brief deadline set on 12/13/96 and Trial deadline set on 9:00 a.m. on 5/5/97 (by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 11/19/96]
11/15/96	217	PARTIAL JUDGMENT entered pursuant to Rule 58 that third party plaintiff, Amerada Hess Corporation, recover of and from the United States the amount of $39,259,703.40. The judgment entered herein shall bear interest, dating from fifty (50) days from the date that it is submitted by subject third party plaintiff for payment until payment is made in full, under the rate specified in 41 U.S.C. subsection 611. Payment shall be made by wire to Chase Manhattan Bank, New York, New York, ABA #021000021, for credit to Amerada Hess Corporation Account #910-2-475200 (signed by Clerk). Copy to parties. (as) [Entry date 11/20/96]
11/18/96	218	CERTIFIED TRANSCRIPT OF JUDGMENT forwarded to attorney of record. See letter in file. (as) [Entry date 11/21/96]
12/16/96	219	MOTION by USA (Service : 12/16/96) to Amend [216-1] Scheduling order, re: enlarge time to depose witness to 1/31/97. Response due: 1/2/97. (hw) [Entry date 12/19/96]

DATE	NO.	PROCEEDINGS
12/23/96	220	ORDER granting [219-1] motion to Amend [216-1] Scheduling order (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 12/30/96]
1/3/97	221	MOTION by MOBIL EXPLORATION, MARATHON OIL COMPANY (Service BY HAND: 1/3/97) to Compel discovery, to Amend [216-1] Scheduling and for an immediate discovery conference. [Exhibit B PLACED IN CAMERA]. Response due: 1/17/97 (as) [Entry date 01/07/97] [Edit date 01/07/97]
2/5/97	222	MOTION by OXY USA INC., et al. (Service BY HAND: 2/5/97) for an immediate status conference. Response due: 2/19/97 (as) [Entry date 02/10/97]
2/10/97	223	MOTION by USA (Service : 2/10/97 By hand) to Amend [216-1] Scheduling order. Response due: 2/24/97 (ss) [Entry date 02/12/97]
2/13/97	224	ORDER reset Defendant's Appendix G deadline on 6/6/97, Plaintiff's Appendix G deadline on 4/4/97, reset Expert Report due: 3/28/97 for MOBIL EXPLORATION, reset Pretrial Conference for 6/13/97 and reset Trial for 6/23/97 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 02/18/97]
2/18/97	225	ORDER mooting [221-1] motion to Compel discovery, mooting [221-2] motion to Amend [216-1] Scheduling and, mooting [221-3] motion (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 02/19/97]

DATE	NO.	PROCEEDINGS
2/19/97	227	Notice of reassignment to Judge James T. Turner. Copy to parties. (as) [Entry date 03/13/97]
2/26/97	226	ORDER granting [223-1] motion to Amend [216-1] Scheduling order amending captioned style, reset Trial for 10:00 a.m. on 7/21/97 and reset Pretrial Conference for 10:30 a.m. on 7/9/97 (signed by Judge Wilkes C. Robinson). Copy to parties. (as) [Entry date 03/04/97]
3/12/97	228	JOINT MOTION by USA, MARATHON OIL COMPANY to revise scheduling order, re: (1) Depositions of defendant's expert witnesses shall be taken on or before March 20, 1997; (2) Plaintiffs shall provide the expert report by April 3, 1997; (3) Plaintiffs shall file their final exhibit lists, witness list and memoranda of contentions of law and fact, etc., by April 10, 1997; (4) Depositions of plaintiffs' expert witnesses shall be taken on or before May 22, 1997; and (5) Defendant shall file its final exhibit lists, final witness list, and memoranda of contentions of law and fact with the court by June 12, 1997 (hw) [Entry date 03/17/97]
3/13/97	229	ORDER granting [228-1] joint motion to revise scheduling order, reset Expert Report due: 4/3/97 for MARATHON OIL COMPANY, reset Defendant's Appendix G deadline on 6/12/97, Plaintiff's Appendix G deadline on 4/10/97 (signed by Judge James T. Turner). Copy to parties. (as) [Entry date 03/18/97]
3/31/97	230	MOTION by USA (Service : 3/28/97) to waive certain requirements of RCFC Appendix G. (ss) [Entry date 04/10/97]

DATE	NO.	PROCEEDINGS
4/2/97	231	ORDER denying [230-1] motion to waive certain requirements of RCFC Appendix G (signed by Judge James T. Turner) Copy to parties. (hw) [Entry date 04/14/97]
4/10/97	232	Witness list by MARATHON OIL COMPANY and MOBIL OIL EXPLOR. Service: 4/10/97. (hw) [Entry date 04/21/97]
4/10/97	233	Exhibit list by MARATHON OIL COMPANY and MOBIL OIL EXPLOR Service: 4/10/97. (hw) [Entry date 04/21/97]
4/10/97	234	PRETRIAL MEMORANDUM by MARATHON OIL COMPANY. Service: 4/10/97. ☐ (hw) [Entry date 04/24/97]
4/10/97	235	MOTION by MARATHON OIL COMPANY, MOBIL OIL EXPLOR (Service : 4/10/97) to Correct caption. Response due: 4/28/97 (hw) [Entry date 04/25/97]
4/16/97	236	ORDER granting [235-1] motion to Correct caption. (signed by Judge James T. Turner). Copy to parties. (ds) [Entry date 04/30/97]
4/21/97	237	MOTION by MARATHON OIL COMPANY, MOBIL OIL EXPLOR (Service: 4/16/97 By Hand) for In-Person Status Conference and Response to Court's Letter 4/16/97. Response due: 5/5/97 (ss) [Entry date 05/02/97]
4/22/97	238	ORDER withdrawing [237-1] motion for In-Person Status Conference; and directing parties to file reports of experts on damages issues. (signed by Judge James T. Turner) Copy to parties. (ds) [Entry date 05/03/97]
4/23/97	239	Additional Documentation pursuant to Rule 16 and App G [appendicies prepared by plaintiffs' expert witnesses (exhibits A, B,

DATE	NO.	PROCEEDINGS
		and C three separate IN CAMERA EXHIBITS plus public notice)] filed by MARATHON OIL COMPANY, MOBIL OIL EXPLORATION and PLACED IN CAMERA this day. Service: 4/23/97 (rs) [Entry date 05/06/97]
6/6/97	240	MOTION by USA (Service : 6/6/97) to Extend Time to June 17, 1997, to file its exhibit list, witness list, and contentions of law and fact. Response due: 6/23/97 (cdc)
6/6/97	241	ORDER granting [240-1] motion to Extend Time to June 17, 1997, to file its exhibit list, witness list, and contentions of law and fact. (signed by Judge James T. Turner) Copy to parties. (cdc) [Entry date 06/16/97]
6/17/97	243	Witness list by USA. Service 6/17/97 (ab) [Entry date 06/23/97]
6/17/97	244	JOINT STATEMENT OF ISSUES OF FACT AND LAW (st) [Entry date 06/27/97]
6/17/97	245	PRETRIAL MEMORANDUM by USA Service: 6/17/97 ☐ (st) [Entry date 06/27/97]
6/17/97	246	Exhibit list by USA Service: 6/17/97 (st) [Entry date 06/27/97]
6/20/97	242	MOTION by USA (Service : 6/19/97) for Leave to File amended exhibit list. Response due: 7/7/97. (hw) [Entry date 06/23/97]
7/1/97	254	MOTION by MARATHON OIL COMPANY (Service by hand: 7/1/97) for Leave to File a response to defendant's memorandum of contentions of fact and law. Response due: 7/15/97 (ds) [Entry date 07/18/97]
7/2/97	250	MOTION by MARATHON OIL COMPANY, MOBIL OIL EXPLOR (Service : 7/2/97) in Limine to exclude certain testimony and evidence at trial. Response due: 7/21/97 (cdc) [Entry date 07/16/97]

DATE	NO.	PROCEEDINGS
7/3/97	256	MOTION by USA (Service : 7/3/97) for Leave to File transcripts of deposition testimony as substantive evidence. Response due: 7/21/97. (hw) [Entry date 07/21/97]
7/7/97	251	RESPONSE by USA, MARATHON OIL COMPANY to [245-1] memorandum by USA Service: 7/1/97 (cdc) [Entry date 07/17/97]
7/7/97	252	ORDER granting [242-1] motion for Leave to File amended exhibit list (signed by Judge James T. Turner) Copy to parties. (cdc) [Entry date 07/17/97]
7/7/97	253	Amended Exhibit list by USA Service: 6/20/97 (cdc) [Entry date 07/17/97]
7/7/97	257	ORDER granting [256-1] motion for Leave to File transcripts of deposition testimony as substantive evidence (signed by Judge James T. Turner) Copy to parties. (ds) [Entry date 07/22/97]
7/7/97	258	Deposition transcripts of James Martin, Paul H. Benson and Paul J. Hoenmans filed by defendant. (ds) [Entry date 07/22/97]
7/7/97	259	MOTION by USA (Service : 7/7/97) for Leave to File reply to response to memorandum of contentions of fact and law. Response due: 7/24/97 (ds) [Entry date 07/22/97]
7/7/97	260	RESPONSE by MARATHON OIL COMPANY, MOBIL OIL EXPLOR (Service by hand: 7/9/97) to [259-1] motion for Leave to File reply to response to memorandum of contentions of fact and law Reply due: 7/18/97. (ds) [Entry date 07/22/97]

DATE	NO.	PROCEEDINGS
7/8/97	247	RESPONSE by USA (SUPPLEMENT TO SUBMISSIONS FILED PURSUANT TO RCFC 16 AND APPENDIX G) Service: 7/7/97 Filed by leave of the Judge. (cdc) [Entry date 07/09/97]
7/8/97	263	RESPONSE by USA (Service: 7/8/97) to [250-1] motion in Limine to exclude certain testimony and evidence at trial. Reply due: 7/21/97 (ds) [Entry date 07/24/97]
7/8/97	264	ORDER granting [259-1] motion for Leave to File reply to response to memorandum of contentions of fact and law (signed by Judge James T. Turner) Copy to parties. (Reply was incorporated in motion for leave) (ds) [Entry date 07/24/97]
7/10/97	248	SUPPLEMENT TO MOTION in limine with attached Exh. A by MARATHON OIL COMPANY, MOBIL OIL EXPLOR (Service 7/8/97) Filed by leave of the Judge. FILED UNDER SEAL AND SUBJECT TO PROTECTIVE ORDER. in Limine Response due: 7/22/97 (cdc)
7/14/97	249	TRANSCRIPT of proceedings re: pretrial conference, 1 volume, at Washington D.C., for date of July 9, 1997. Notice to parties. (st) [Entry date 07/15/97]
7/17/97	255	STATUS REPORT by USA Service: 7/16/97 (cdc) [Entry date 07/18/97]
7/18/97	261	STATUS REPORT by USA, MARATHON OIL COMPANY, MOBIL OIL EXPLOR Service: 7/18/97 (cdc) [Entry date 07/22/97]
7/18/97	262	TRANSCRIPT of proceedings re: Pretrial Conference (continued), 1 volume, at Washington, D.C., for date of July 14, 1997. Notice to parties. (st) [Entry date 07/23/97]

DATE	NO.	PROCEEDINGS
7/18/97	265	UNPUBLISHED ORDER entered directing entry of partial judgment pursuant to Rule 54(b) stating that there is no just reason for delay, together with memorandum concerning final pre-trial conference, (signed by Judge James T. Turner). Copy to parties. (tw) [Entry date 07/25/97]
7/18/97	267	UNPUBLISHED ORDER directing entry of final judgment (signed by Judge James T. Turner). Copy to parties. (tw) [Entry date 07/25/97]
7/24/97	—	Case closed (tw) [Entry date 07/25/97]
7/24/97	266	Partial judgment entered on July 25, 1997, pursuant to Rule 58 in favor of plaintiff, MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC., in the amount of $78,257,565 VACATED PURSUANT TO THE ORDER OF MAY 28, 1999. (ds) [Entry date 06/01/99]
7/24/97	268	Judgment entered on July 25, 1997, pursuant to Rule 54 in favor of plaintiff, MARATHON OIL COMPANY, in the amount of $78,242,-368.59 VACATED PURSUANT TO THE ORDER OF MAY 28, 1999. (ds) [Entry date 06/01/99]
7/25/97	269	CERTIFIED TRANSCRIPT OF JUDGMENT forwarded to attorney of record. See letter in file. (tw) [Entry date 07/28/97]
7/25/97	270	CERTIFIED TRANSCRIPT OF JUDGMENT forwarded to attorney of record. See letter in file. (tw) [Entry date 07/28/97]
8/20/97	271	Bill of costs by MARATHON OIL COMPANY, MOBIL OIL EXPLOR Service: 8/20/97 (Objection to Bill of Costs due by 9/8/97) (cdc)

DATE	NO.	PROCEEDINGS
9/11/97	272	MOTION by USA (Service: 9/11/97) for Leave to File response to Cost Petition Response due: 9/29/97. (st) [Entry date 09/15/97]
9/12/97	273	ORDER granting [272-1] motion for Leave to File response to Cost Petition (signed by Judge James T. Turner) Copy to parties. (cdc) [Entry date 09/16/97]
9/12/97	275	OBPECTION (Reply due 9/25/97) by USA to [271-1] bill of costs by MOBIL OIL EXPLOR, MARATHON OIL COMPANY. Service: 9/11/97 (ds) [Entry date 09/25/97]
9/19/97	276	NOTICE OF APPEAL by USA. Copy to MARATHON OIL, etc., Judge Turner and to CAFC. Fee not required. (hw) [Entry date 09/22/97]
9/19/97	277	REPLY by MARATHON OIL COMPANY, MOBIL OIL EXPLOR to [275-1] objection to bill of costs by USA. Service: 9/18/97 (ds) [Entry date 09/25/97]
9/25/97	—	CAFC Case Number Re: [276-1] appeal by USA. CAFC NUMBER: 97-5146. (hw) [Entry date 09/29/97]
5/20/99	278	MANDATE (certified copy) from the CAFC, dated May 20, 1999, reversing the □ [266-1] and [268-1] judgments. (ds) [Entry date 06/01/99]
5/28/99	279	ORDER vacating [266-1] and [268-1] judgments and directing the entry of a new judgment in favor of defendant; and directing plaintiffs to return the certified transcripts of judgment forwarded on July 25, 1997. (signed by Judge James T. Turner) Copy to parties. (ds) [Entry date 06/01/99]

DATE	NO.	PROCEEDINGS
6/1/99	280	JUDGMENT entered pursuant to Rule 58, dismissing the complaints. Each party shall bear its own costs. [Vacated to the limited extent that is applies to Count III (alleging a Fifth Amendment taking) of Marathon's complaint filed on October 29, 1992. per Order dated Aug. 25, 1999.] (signed by Clerk). Copy to parties. (ds) [Edit date 08/26/99]
6/1/99	—	Case closed (ds)
6/7/99	281	CERTIFIED TRANSCRIPTS OF JUDGMENT dated July 24, 1997 returned to Clerk's Office by E. Edward Bruce, and destroyed this date. (ld) [Entry date 06/08/99]
6/8/99	282	MOTION by MARATHON OIL COMPANY (Service: 6/8/99) for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order, and/or to alter or to Amend [280-1] judgment order. Response due: 6/21/99. (dw) [Entry date 06/11/99]
6/22/99	283	ORDER Defendant's response to [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order set to 7/9/99, [282-2] motion to Amend [280-1] judgment order set to 7/9/99. (signed by Judge James T. Turner) Copy to parties. (jt) [Entry date 06/23/99]
7/9/99	284	RESPONSE by USA (Service: 7/9/99) to [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order, [282-2] motion to Amend [280-1] judgment order. (jt) [Entry date 07/12/99]

DATE	NO.	PROCEEDINGS
7/22/99	285	REPLY by MARATHON OIL COMPANY to response to [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order, [282-2] motion to Amend [280-1] judgment order. Filed by leave of the Judge. Service: 7/16/99 (jt) [Entry date 07/23/99]
8/2/99	286	SURREPLY by USA to [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order by MARATHON OIL COMPANY, [282-2] motion to Amend [280-1] judgment order by MARATHON OIL COMPANY. Filed by leave of the Judge. Service: 7/29/99 (jt) [Entry date 08/03/99]
8/4/99	287	RESPONSE by MARATHON OIL COMPANY to [286-1] response by USA, by leave of the Judge. Service: 8/3/99. (dw)
8/9/99	288	ORDER oral argument set for 10:30 a.m. 8/18/99 for [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order, set for 10:30 a.m. 8/18/99 for [282-2] motion to Amend [280-1] judgment order (signed by Judge James T. Turner). Copy to parties. (dw) [Entry date 08/10/99]
8/18/99	—	Oral Argument re: [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59 re: [280-1] judgment order by MARATHON OIL COMPANY (Transcript due 9/17/99), [282-2] motion to Amend [280-1] judgment order by MARATHON OIL COMPANY (Transcript due 9/17/99) □ (ds) Entry date 08/20/99]
8/25/99	289	ORDER granting [282-1] motion for Reconsideration/Rehearing Pursuant to Rule 59

DATE	NO.	PROCEEDINGS
		re: [280-1] judgment order, granting [282-2] motion to Amend [280-1] judgment order. Accordingly, it is ordered that the judgment entered on June 1, 1999 in favor of the defendant and against both plaintiffs shall be vacated to the limited extent that it applied to Count III (alleging a fifth amendment taking) of Marathon's complaint filed on October 28, 1992. Inasmuch as the resulting judgment in favor of defendant and against Marathon constitutes a partial judgment, it is expressly determined, pursuant to RCFC 54(b), that there is no just reason to delay the partial judgment in favor of the government with respect to Counts I and II of Marathon's complaint. Further it is ordered that all proceedings in this matter are hereby suspended generally and shall remain suspended Staying until final action by the United States Supreme Court in response to any petition for writ of certiorari submitted by plaintiff Marathon in connection with the revised opinion of the Federal Circuit dated May 13, 1999 and its subsequent mandate issued on May 20, 1999. (signed by Judge James T. Turner) Copy to parties. (ld)
8/26/99	290	JUDGMENT entered, as provided for in Rule 54(b), in favor of the government with respect to Counts I and II of Marathon's complaint. Counts I and II of Marathon's complaint are dismissed. (signed by Clerk). Copy to parties. (ld)
8/26/99	—	Case reopened (ld)
9/17/99	291	TRANSCRIPT of proceedings 1 volume, at Washington, D.C., for date of August 18, 1999. Notice to parties. (st) [Entry date 09/21/99]

DATE	NO.	PROCEEDINGS
11/15/99	292	NOTICE of the Grant of Petition for Writ of Certiorari by MARATHON OIL COMPANY. Service: 11/15/99 (jt) [Entry date 11/17/99]

UNITED STATES COURT OF FEDERAL CLAIMS

No. 97-5146

MARATHON OIL CO.

v.

UNITED STATES OF AMERICA

DOCKET ENTRIES

DATE	PROCEEDINGS
10/3/97	CERTIFICATE OF INTEREST FOR THE APPELLEE(S), MARATHON OIL CO, MOBIL OIL EXPLO., PRODT. (MS-10/03/97) FILED: 10/03/97. (EOD 10/03/97 BY KKC) 97-5146
11/13/97	Appellant—MOTION FOR ENLARGEMENT OF TIME. (MS-11/13/97) FILED: 11/13/97. ON CONSENT. ACTION ON MOTION (3): GRANTED. BY CLERK. FILED: 11/21/97. (EOD 11/21/97 BY JB) THE BRIEF IS DUE ON 12/08/97. 97-5146
12/8/97	THE UNITED STATES [Appellant] - BRIEF FOR DEFENDANT-APPELLANT, THE UNITED STATES (MS-12/08/97). FILED: 12/08/97. [985354] (EOD 12/12/97 BY JLA) 97-5146
1/20/98	MARATHON OIL COMPANY, ET AL. [APPELLEES - BRIEF FOR PLAINTIFFS-APPELLEES (MS-01/20/98). FILED: 01/20/98. [985700] (EOD 01/22/98 BY JLA) 97-5146
1/30/98	Appellant - MOTION FOR 13 CALENDAR DAY ENLARGEMENT OF TIME TO FILE REPLY BRIEF. [NPF] (MS-01/30/98) FILED: 01/30/98. ACTION ON MOTION (5): MOTION GRANTED. BY CLERK. FILED: 02/27/98. (EOD 02/27/98 BY ETW) 97-5146

DATE	PROCEEDINGS
2/19/98	THE UNITED STATES [APPELLANT] - REPLY BRIEF FOR DEFENDANT-APPELLANT, THE UNITED STATES (MS-02/19/98). FILED: 02/27/98. [986032] (EOD 03/06/98 BY JLA) 97-5146
3/2/98	THE UNITED STATES [APPELLANT] - JOINT APPENDIX - TWO VOLUMES (MS-03/02/98). FILED: 03/02/98. ENTRY OF APPEARANCE NOTICE ISSUED. [986054] (EOD 03/09/98 BY JLA) 97-5146
3/23/98	NOTICE OF CALENDARING issued. Panel 980-5B on May 4, 1998
4/1/98	REVISED NOTICE OF CALENDARING ISSUED PANEL 05B ON MAY 4, 1998
5/4/98	Submitted after ORAL ARGUMENT by E. Edward Bruce and Mark A. Melnick. (NEWMAN, PLAGER and SCHALL)
5/8/98	Appellees - MOTION FOR LEAVE TO FILE A LETTER CORRECTING A MISSTATEMENT MADE BY COUNSEL FOR APPELLANT DURING THE REBUTTAL ARGUMENT. (LETTER ATTACHED) [NPF] (MS-05/08/98) RECEIVED: 05/08/98. REPLY 1 (9) FILED: 05/13/98. ACTION ON MOTION (10): LEAVE TO FILE IS GRANTED. BY MERITS PANEL. FILED: 05/20/98. (EOD 05/20/98 BY JB) 97-5146
10/15/98	REVERSED. PRECEDENTAL OPINION BY: J. PLAGER. DISSENTING OPINION BY: J. NEWMAN. JUDGMENT ENTERED: 10/15/98. COSTS AGAINST APPELLEE. (EOD 10/15/98 BY KSH) 97-5146
11/25/98	APPELLEE - COMBINED PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC (MS-11/25/98) FILED: 11/25/98

DATE	PROCEEDINGS
	PETITION CIRCULATED: 11/25/98 RESPONSE REQUESTED FROM: APPELLANT (U.S.) RESPONSE DUE: 01/12/99 RESPONSE FILED: 01/11/99 RESPONSE CIRCULATED: 01/11/99 PETITION: GRANTED ON 05/13/99. SUGGESTION CIRCULATED: 04/30/99 SUGGESTION: DECLINED ON 05/13/99. (EOD 05/13/99 BY AV) 97-5146 (Petition granted for the ltd. purpose of clarifying the opinion)
11/25/98	A.P.I. & I.P.A.A. - MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF. (MS-11/25/98) FILED: 11/27/98. ON CONSENT. ACTION ON MOTION (14): GRANTED. BY MERITS PANEL. FILED: 01/29/99. (EOD 01/29/99 BY AV) 97-5146
12/8/98	Appellant - MOTION FOR A 28-DAY EXTENSION OF TIME TO FILE THE OPPOSITION TO THE REHEARING. (MS-12/08/98) FILED: 12/08/98. ON CONSENT. ACTION ON MOTION (13): GRANTED. THE OPPOSITION IS DUE 1/12/99. BY MERITS PANEL. FILED: 12/11/98. (EOD 12/11/98 BY AV) 97-5146
2/18/99	Appellant - MOTION FOR LEAVE TO FILE A RESPONSE TO THE AMICUS BRIEF. (THE RESPONSE IS SUBMITTED W/THIS MOTION) [NPF] (MS-02/18/99) FILED: 02/18/99. ON CONSENT. ACTION ON MOTION (15): LEAVE TO FILE IS GRANTED. BY MERITS PANEL. FILED: 03/05/99. (EOD 03/05/99 BY AV) 97-5146
5/13/99	REVERSED. PRECEDENTIAL OPINION BY: J. PLAGER. DISSENTING OPINION BY: J. NEWMAN. JUDGMENT ENTERED: 05/13/99. COSTS AGAINST APPELLEE. (EOD 05/13/99 BY KSH) 97-5146

DATE	PROCEEDINGS
5/20/99	MANDATE ISSUED TO THE CFC: 05/20/99. (EOD 05/20/99 BY JCW) 97-5146
8/10/99	PETITION FOR WRIT OF CERTIORARI FILED 08/10/99, SUPREME COURT #: 99-244. (EOD 08/13/99 BY JW) 97-5146

FINAL

SECRETARIAL ISSUE DOCUMENT
SOUTH ATLANTIC
OCS SALE 56

February 1981
U.S. Department of the Interior

* * * *

—Successful exploratory wells in this frontier area will have to be followed by a greater number of delineation wells than normal in order to assure an adequate resource to justify the extremely high development costs (platforms, guyed towers, tension leg platforms, deep pipelines, etc.) in these water depths. Preliminary information suggests that an average of seven to eight delineation wells may be needed in this area as opposed to the normal four to five. Each well takes 4 to 5 months to drill once a ship is on site.

—Because there is no existing infrastructure, facilities, such as pipelines, and production techniques would have to be developed. These time-consuming projects would take much longer than a 5-year lease term provides. Suspensions of operation or production (SOP's), pursuant to USGS regulations (30 CFR 250.12), which extend the lease term, are discretionary and are not easily applied to these situations. Also, since they would be applied on a case-by-case basis, consistency of treatment is not assured. From a policy standpoint, it would be better to grant longer lease terms for a problem known to exist at the time of lease issuance. The lease term should be designed to include time to begin production and not just to conduct exploratory and delineation drilling. In the shallower water depths of the Gulf of Mexico, experience indicates that the standard lease term is usually enough to begin production and thus it was conceived of as normally encompassing the time necessary to begin that phase. The predictability of a longer lease term can do much to assure industry that they will be allowed

enough time to do the job right instead of depending on discretionary administrative action to correct a situation later when hundred million dollar investments are involved.

Existing Departmental regulations contain mechanisms to encourage early activity on all leases. Such mechanisms are particularly beneficial in countering perceived speculative aspects of leases issued for primary terms longer than the normal 5-year period. USGS regulations (30 CRF 250.34-1(a)(3)) provide that for leases issued with an initial period of more than 5 years, the lessee must submit either an exploration plan or a general statement of exploration intentions within a period of time specified at the time of offering the tracts for sale. The USGS has indicated that 3 years would be a proper time and this is proposed as part of this option.

Due to all these factors, an option has been developed to select a 10-year lease term of 137 tracts (Tract Nos. 1-39, 46-130, 162-174). While the Secretary could select a lesser time for the primary lease term (for example, 8 years) based on his judgment and consideration of the numerous factors involved, a uniform 10-year term was constructed as an option because (1) it is difficult to determine with precision, that 8 years or any other number, is adequate and 10 years excessive, (2) the shortage of drill rigs for the unusually deep water involved, (3) the desire to avoid adjacency and structure splitting problems should a shorter lease term tract be chosen next to a longer lease term tract, (4) the near certainty that production might not begin even within the maximum 10 years allowed by statute, (5) the judgment that a longer lease term is a more appropriate policy response than relying on cumbersome and discretionary SOP's on a case-by-case basis.

[Logo]

NORTH CAROLINA DEPARTMENT OF NATURAL RESOURCES & COMMUNITY DEVELOPMENT

James B. Hunt, Jr., Governor
Joseph W. Grimsley, Secretary
James A. Summers, Deputy Secretary
Telephone 919 733-4818

August 17, 1982

Mr. Bruce E. Wamsley
Mid-Atlantic District Supervisor
Minerals Management Service
515 Tilton Road
Northfield, New Jersey 08225

Dear Mr. Wamsley:

The State of North Carolina has completed its review of Chevron's exploration plan, environmental report, and consistency certification for block 510, OCS lease sale #56. The review also included the July 21st Appendix to the exploration plan which was prepared at the state's request. We concur in Chevron's consistency certification. We are satisfied for the appropriate federal agencies to issue the permits and approvals described in the exploration plan. Each federal agency should notify the State of North Carolina as permits are issued.

The State of North Carolina will continue its efforts with Chevron, the Coast Guard, and MMS to reduce the response times for oil spills.

Chevron, their consultants, and MMS have been most cooperative throughout this consistency review. The state

is grateful and looks forward to a continued good relationship.

If you have any questions on this matter, please let me know.

Sincerely,

/s/ James A. Summers
JAMES A. SUMMERS

JAS:ap

cc: Governor James B. Hunt, Jr.
Mr. Bill Matuszeski
Acting Asst. Administrator, OCZM, NOAA
Mr. Harold Nasse
Chevron U.S.A., Inc.
Dr. Harold D. Palmer
Interstate Electronics Corp.
DCS Task Force

[State Logo]

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
Raleigh 27611

James B. Hunt, Jr.
Governor

October 15, 1982

Dear Mr. Ake:

This letter is my response to Atlantic Richfield Oil and Gas Company's Exploration Plan and Environmental Report. The information included in this letter should help you prepare your Environmental Assessment.

The State of North Carolina has no objections with the proposed project as described in the Exploration Plan. There are three contingencies, however, that are of critical importance to the acceptability of this plan.

They are:

(1) Satisfactory revision of the ARCO Oil Spill Contingency Plan;

(2) Adequate information from the Currents Study being conducted by ARCO and the subsequent determination of the availability of and the intent to use appropriate technology, and;

(3) The implementation of an acceptable photo-documentation survey of biological resources in the exploration area.

I recommend that these documents be submitted to the State for review and comment. They represent factors which are important to our determination of the adequacy of the Exploration Plan.

Enclosed are comments and questions raised by my staff which require attention.

Please call me or my staff if I can be of assistance to you in the preparation of the Environmental Assessment.

My warmest personal regards.

Sincerely,

/s/ James B. Hunt, Jr.

Mr. Larry Ake
Mid-Atlantic Acting District Supervisor
Minerals Management Service
515 Tilton Road
Northfield, New Jersey 08225

Enclosure

[State Logo]

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
Raleigh 27611

James G. Martin
Governor

6 October 1988

Mr. Ralph Ainger
Acting Regional Manager
Minerals Management Service
1951 Kidwell Drive
Vienna, Virginia 22180

RE: Mobil Plan of Exploration Off North Carolina

Dear Mr. Ainger:

In recent discussions with Mobil and your office, my staff and I expressed our grave concerns about the impacts development of any hydrocarbon resources would have on the State's valuable estuarine system and other important coastal resources. In my direct discussions with representatives from Mobil, I stressed the necessity of providing quality and substantive information to our citizens and state government to allow us to plan how to best protect our fragile coastal resources. The purpose of this letter is to reaffirm that request to the responsible federal agency.

The first issue I wish to address regards the environmental impact analyses. The State has consistently maintained that the earlier environmental impact statements (EIS), completed before and after the leases were issued are unsound for some topics. The level of scientific information for these ocean areas has increased dramatically since 1981. It shows unquestionably that the prior analyses were based on flawed data and assumptions. Direct

and indirect onshore impacts from a discovery the size Mobil is projecting were never sufficiently analyzed. Consequently, the State demands that a full environmental impact statement be prepared on the Mobil proposal. Otherwise, the plan will be incomplete and the State will challenge any contrary decision.

My staff and I are aware of the practical importance of giving early and specific statements of information needs. We have strived to do so in each of our respective meetings. I am especially pleased by the recent decision of Mobil to provide complete data on each of the seven proposed exploratory wells rather than dividing the information into two submissions. However, I remain concerned whether the analysis accompanying this information will be developed through the interactive procedures embodied in the standards established by the President's Council on Environmental Quality for implementation of the National Environmental Policy Act. I am equally concerned that the analysis include a discussion of reasonable alternatives to the various decisions your agency will make. Consequently, the State considers it essential that the environmental report accompanying the plan of exploration be a full EIS, including alternative actions and developed after the opportunity for notice and comment by the public and government agencies. I consider our citizens' continuing demand for that level of scrutiny appropriate and proper.

The second significant issue that I raise is of equal importance to our citizens and the State. From my consultations with the Attorney General's staff and my own staff, I understand that the Outer Continental Shelf Lands Act (OCSLA) separates the exploration and development phases of lease activity for regulatory purposes. However, I am also informed the Act vests in your agency the authority to require that Mobile accompany the plan

of exploration with "a general statement of development and production intention which shall be for planning purposes only and which shall not be binding on any party." Our citizens are deeply concerned about the direct, indirect and cumulative onshore and offshore impacts of the proposed action.

For these reasons, I request you exercise your authority under the OCSLA and your regulations to require that Mobil submit such a statement with its plan of exploration. It is North Carolina's position that the statement is within the range of information and date which may be required under § 250.33(b)(21) of your regulation entitled "Exploration Plan" and is necessary to a full and fair evaluation of the plan of exploration.

By copy of this letter, I have relayed these concerns to Mobil. I look forward to your reply and our continued cooperation to bring forward all the information needed to decide the critical issues raised by exploration in this frontier area. I urge you to employ your authority so that examination of the critical issues precedes any action by your agency. By separate letter Donna Moffitt will forward a more specific statement of minimal information needs the State has identified. Should similar critical information needs be identified, I shall forward them to you immediately.

Sincerely,

/s/ Jim Martin
JAMES G. MARTIN

JGM/DFM/dw

cc: Senator Jesse Helms
Senator Terry Sanford
Representative Walter B. Jones
Attorney General Lacy H. Thornburg
Donald Hodel, Secretary of the Interior
William Bettenberg, Director of
Minerals Management Service
William C. Whittemore, Mobil Oil
Robert W. Haines, Mobil Oil

[State Logo]

NORTH CAROLINA
DEPARTMENT OF ADMINISTRATION
400 Oberlin Rd., Suite 300
Raleigh, North Carolina 27605
Telephone 919-733-2290

James G. Martin, Governor
James S. Lofton,
Secretary

Office of Marine Affairs
W. Neal Conoley, Jr.,
Director

October 20, 1988

Mr. Ralph V. Ainger
Minerals Management Service
Atlantic OCS Region
1951 Kidwell Drive, Suite 601
Vienna, Virginia 22180

Dear Ralph:

In Governor Martin's letter of October 6, he stated that I would be sending you more details of our information requirements for Mobil's offshore drilling proposal. We have identified the following concerns that we believe must be addressed by Mobil and/or MMS in the POE or other accompanying documentation:

1. Correct and update information in the old EIS for fisheries data, oceanographic conditions, and N.C. population figures that account for seasonal variations and community infrastructure needs and are based on a discovery the size Mobil is projecting. This can be accomplished through a new EIS or a supplemental EIS or an environmental report developed under procedures allowing for notice and opportunity to be heard by

the public and state and federal agencies. Mobil would have to specifically answer how concerns raised at public hearings and through written comments were addressed in the POE.

2. Work with N.C. to

   a. identify an optional drilling window which we believe should be slightly different than Mobil's proposed window;

   b. develop an oil spill contingency plan that provides a prioritized scheme for environmental and resource protection from oil spills if computer modelling of trajectories proves infeasible.

3. Comply with the Ocean Discharge Criteria of the Clean Water Act for its NPDES discharge permit.

4. Provide seismic data, bottom surveys, and spill trajectories (or an alternative acceptable to N.C. with respect to oil spill planning) for each well site identified in the POE. Be prepared to shift well head locations to avoid biological activity or geohazards if photo surveys or bottom profiles warrant such action.

5. Provide alternatives on timing of drilling, types of drilling muds and alternative ways of disposal, alternative staging sites and work force requirements. Compare Mobil's proposed drilling site to North Sea or Surinam drilling conditions.

6. Provide details on a potential hydrogen sulfide plant including size, location, work force, impacts on air or water quality, surface or ground water requirements, solid or hazardous waste treatment or disposal concerns, safety issues, leak detection and warning systems.

7. Provide preliminary planning data on how gas and/or oil will be brought to shore and where, alternative locations for processing or distribution plants, size of work crews for developing the field and laying pipelines, anticipated fabrication facilities, population rises and falls of work crews and their families during exploration, development and production phases.

8. Provide data in sufficient detail to allow our State agencies to conduct an adequate consistency review.

9. Consider establishing a formal panel of state, federal, industry and local interests to work out the details of how Mobil can best address our concerns.

Addressing these issues may require Mobil to delay exploratory drilling until spring 1990.

In summary, we are prepared to oppose Mobil's proposal unless Mobil provides enough information to show that the anticipated and proposed offshore and onshore activities can be conducted safely and with the least harm to our valuable coastal resources. We believe that we can best deal with fiscal, environmental, and other effects of OCS development if we anticipate, plan for, and attempt to mitigate potential negative impacts. The ultimate impact of OCS generated activities, development, new population and increased service demands will be significantly reduced by the planning and prevention measures undertaken now at the federal, state, regional, and local levels.

Thank you for your attention to this matter.

Sincerely Yours,

/s/ Donna
DONNA D. MOFFITT
Chairperson
Governor's Working Group on
Mobil Offshore Drilling

DDM/kl

cc: Mr. Robert Haines
Mr. William Whittemore
Mr. Edmund Welch
Dr. David Gettleson

[State Logo]

NORTH CAROLINA
DEPARTMENT OF ADMINISTRATION
19 W. Hargett, St., 9th Floor
Raleigh, North Carolina 27601
Telephone 919-733-4656

James G. Martin, Governor Outer Continental Shelf Office
James S. Lofton, Secretary Donna D. Moffitt, Director

January 9, 1989

Mr. William Whittemore, Esq.
Senior Counsel
Mobil Exploration and Production U.S., Inc.
1250 Poydras Building—Suite 2021
New Orleans, Louisiana 70113

Dear Bill:

As I have mentioned to you, we have begun to identify our informational needs for the wildcat drilling activities at the Manteo Unit. Because we are inexperienced, we may be asking these questions prematurely, or they may be overly simplistic, or you may feel some of the responses would involve proprietary data. However, we are trying to learn as much as we can about the level of data we will be allowed to review, the relevance of the data, and when and in what form we will be allowed to review it. We think this approach will help us get through the Governor's review phase and our consistency review more effectively and efficiently and perhaps prevent needless delays due to our shortcomings or misunderstandings. We also need to assure a worried public that we are doing all that we can to protect their best interests and the State's natural resources. We can best accomplish that by

asking direct questions and receiving reassuring and informative answers. Simply relying on MMS regulations to answer all our questions or taking your word that Mobil knows what it is doing just isn't good enough for our first offshore exploration well. Perhaps after we have more experience, we will feel comfortable enough with the process that we no longer ask for this type or level of information at this stage of the process. That is why Mobil's response to our informational requests is so important.

How can the following information be provided to us—in the POE, in separate documents, during informal technical meetings, or by other means? Your prompt response as to the level of disclosure your company can accommodate and as to the earliest point at which such information will be made available will be greatly appreciated.

PRESENTLY IDENTIFIED AREAS OF CONCERN REGARDING EXISTING PHYSICAL CONSTRAINTS:

1) Slope—The bottom in the drill site area is highly dissected by canyons and the continental slope averages about fifteen degrees. The canyons are regions of slope instability, and there are several known large slope failures to the north and south of this area. Please provide data which characterizes the slope conditions at the drill site. Emphasis should be placed on slope stability, the possibility of slope failure, and proposed engineering solutions to prevent foundation failure or to handle a massive foundation failure if such were to occur. Information on slope failure could be provided as part of a Shallow Hazards Survey and through photo documentation.

2) Frozen Gas Hydrates—The drill site is in a known area of frozen gas hydrates (clathrates) in the shallow

sub-bottom. Discuss provisions for dealing with these gas hydrates in the event they are encountered during the drilling operations.

3) Ocean Currents—The drill site is under the influence of the Gulf Stream and periodic spin-off eddies which can cause extreme currents and extreme changes over short time spans at both the surface and throughout the water column. Discuss the capabilities of a dynamically positioned drillship (or a moored system if that is ultimately selected) to adequately maintain its position above the well while drilling under adverse conditions. The total generating capacity and safety factors utilized to arrive at the expected peak load should be included. Equipment redundancy and worst case scenarios for catastrophic failures will need to be clearly defined. The accompanying specific items should be discussed fully:

a) Provide an analysis of affecting forces on the vessel and the riser. The analysis should be based on the existing depth versus current velocity data for the drill site. Discuss riser design in relation to current velocity sheer potential.

b) Discuss the power requirements of the dynamic positioning system to be able to remain on drilling location under adverse weather conditions and the effects of adverse weather on drilling operations requirements. Under worst case conditions, will drilling operations be reduced or shut down due to lack of generating capacity for thruster power demands? Please describe in detail how an emergency shutdown will be accomplished.

OVERALL WELL PLANNING CONCERNS:

1) Well and Pore Pressure Concerns for the Manteo Unit (including but not limited to the following):

a) On which detection method(s) are the seismic pressure estimates based?

b) Describe the pressure gradients generated or anticipated pressures to be encountered.

c) Describe specific transitional zones identified based on geophysical methods, data correlation from Exxon's Hatteras well logs, and regional trends observed on the eastern continental shelf drilling program. What procedures are planned for the possibility that extremely porous zones may be encountered, resulting in potential muds system failures?

d) Discuss the estimated probability of an underground blow-out and the potential for resulting problems at the sea bottom or for marine resources.

e) Describe the general well prognosis including the kind of rock above the producing formation and the rock contained in the producing formation.

f) Describe the riser specifications (including whether or not a fairing will be used) and provide an analysis of expected collapse loads due to pressure differentials in case of a gas kick in the spudding or early stages of the drilling program.

g) Casing size, weight, and piping schedule in addition to the installation program should be made available.

h) Describe the process and technology that will be used in connection with any directional drilling or deviations from straight line drilling. Describe the procedures to be implemented if stuck pipe is encountered and the decision is made to cut and drill around it.

2) Pressure detection and control methods to be utilized while drilling operations are underway:

a) drilling mud parameters;

b) lithological observations (shale showings, etc.);

c) rate of penetration, rotary speed, weight on bit, flow-shows, shale density, gas detection-hot wire method, flowline temperature;

d) kick tolerance estimations;

e) muds disposal systems.

3) Well completion techniques.

a) Describe how Mobil plans to permanently seal the Manteo well if no producing quantities of oil or gas are found.

b) What are Mobil's proposed well completion techniques if production were to occur?

SEISMIC/GEOLOGICAL DATA NEEDS:

1) Maps indicating the shape of the structure and surface conditions over the structure.

a) Sea bottom contour maps for all blocks with proposed well sites.

b) Structural depth contour map at top of objective horizon.

c) Two additional structural contour maps above objective horizon (preferably at about 2,000′ intervals above the objective horizon).

d) Structural depth contour map at base of objective horizon or deeper.

2) Six seismic sections (in two forms—one uninterpreted cross section and the remainder in annotated or interpreted cross sections, including faults and mapped horizons, in both recorded time and corrected depth):

a) Three sections running parallel to one another.

b) Three sections running parallel to one another and perpendicular to "a)" above.

c) Middle section of each set should intersect at or near the primary well locations.

3) Depth estimate to the top of the structures.

4) A shallow hazards survey.

PHOTO AND SONAR DOCUMENTATION:

We would also like to request that a series of benthic photographs and sonar transects be completed as soon as possible at the Manteo Exploration Block wildcat well site. This preliminary survey could be completed during the cruise of the Manteo Block Water Current Study. The sonar transects should depict a three dimensional picture of the well site out to a distance of 3,000 feet and provide a depth profile for each photograph. The benthic photographs should be 35mm color slides and of sufficient resolution to allow identification of biological material. The photographic transects should extend from the well site the same distance as the sonar tracks. The information obtained from this initial survey will help to develop a characterization of the physical habitat within the 21 block unit. Such a characterization would be essential, especially if production is ever proposed for the Manteo Unit.

Thank you very much for working with us and we look forward to your response at your earliest convenience.

Sincerely,

/s/ Donna
DONNA D. MOFFITT
Chairperson
Governor's Working Group

cc: Secretary Lofton
Secretary Cobey
Bruce Weetman, MMS

F16NC1.

FINAL
April 1, 1989
10:02am

Question: Is it the policy of MMS to turn down an exploration plan if significant environmental impacts are shown, rather than do an environmental impact statement?

—Do you feel it is impossible to do an environmental impact statement under the 30-day DOI review process?

—Do you see any conflict in this policy and complying with the National Environmental Policy Act's requirements to prepare an EIS, if an environmental assessment shows significant impact?

Answer: If significant environmental impacts were to be shown, we would not approve an exploration plan since the OCS Lands Act specifically provides that a plan must be disapproved if it is determined that any proposed activity under such a plan would cause serious harm or damage to life (including fish and other aquatic life), to property, to any mineral (in areas leased or not leased), to the national security or defense, or to the marine, coastal, or human environment; and, the activity cannot be modified to avoid the harm or damage (43 U.S.C. 1340 and 43 U.S.C. 1334). MMS reviews each exploration plan on a case-by-case basis to determine whether exploratory drilling activity will have significant environmental effects. This is in accordance with the National Environmental Policy Act and the Outer Continental Shelf Lands Act as well as regulations formulated specifically for OCS oil and gas leasing. Based upon accumulated information on approximately 8,000 exploratory wells, including approximately 50 in the Atlantic,

no demonstrated significant environmental effects have resulted from exploratory drilling activity. To date, environmental assessments which have been prepared for exploration plans have applied the accumulated information on environmental effects of previous exploratory wells, as well as pertinent site specific information, and have concluded that no significant environmental effects would occur.

It is not feasible to complete the EIS process during the statutory deadline of 30 days for review of an exploration plan. It is important to note that the 30-day period is not discretionary, but is specifically dictated by statute (40 U.S.C. 1340).

We see no conflict with our policy and compliance with the National Environmental Policy Act. In accordance with the Council on Environment Quality (CEQ) regulations for implementing NEPA, environmental assessments are prepared not only to determine if an EIS is required but also to assist the agency in planning and decision making (1501.3). Based on past experience, we have no reason to expect that an EA will indicate the need for an EIS in this instance. We nevertheless prepare EA's on exploration plans because they are valuable to our decision process.

F17NC2.

Question: How many exploration plans has MMS ever disapproved?

—What are the consequences to MMS for disapproving an exploration plan or cancelling a lease?

—Has MMS ever taken more than 30 days to approve an exploration plan, and if so, what were the consequences to either MMS or the lesses?

Answer: The Minerals Management Service (MMS) does not ordinarily disapprove exploration plans. If the plan is deficient in some manner, the operator is contacted to correct the deficiency. However, since the 1978 Amendments of the Outer Continental Shelf Lands Act (OCSLA) were enacted, there have been 15 disapprovals of exploration plans. These disapprovals were caused by incomplete or inappropriate plans (6) on conflicts with military uses (9). The MMS has never needed to cancel an OCS oil and gas lease under the OCS Lands Act Amendments of 1978, since no activities on leases have caused undue harm to the environment. The ultimate consequence of being unable to reconcile difficulties with an exploration plan due to conflicting uses or unmitigatable environmental damage would be cancellation of the lease. The OCSLA provides that the lessee is entitled to compensation if the Secretary cancels a lease.

The MMS has taken final action on all exploration plans within the 30-day period required by the OCSLA.

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE STATE OF NORTH CAROLINA, MOBIL OIL CORPORATION, AND THE MINERALS MANAGEMENT SERVICE REGARDING EXPLORATION OF OUTER CONTINENTAL SHELF LEASES OFFSHORE NORTH CAROLINA

This memorandum of understanding is entered into on July 12, 1989, by the State of North Carolina (the State), Mobil Oil Corporation (Mobil), and the United States Department of the Interior's Minerals Management Service (MMS), in order to satisfy the statutory requirements of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, and the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and to satisfy the State's needs for information and analysis concerning the environmental impacts of exploration activities conducted by Mobil on leases held by Mobil and others located on the federal Outer Continental Shelf offshore the State, including leases on block numbers 204, 246, 247, 290, 291, 334, 335, 378, 379, 422, 423, 466, 467, 510, 511, 553, 554, 555, 597, 598, 599, 640, 641, or 642.

The following agreement provisions are graphically presented in the Environmental Action Plan Timeline attached hereto and made a part of this memorandum as Attachment A. The timeline is intended to illustrate the text of the agreement; if there is an inconsistency between the timeline and the text, the text controls.

I

WHEREAS Mobil is a lessee in whole or in part of certain Outer Continental Shelf oil and gas leases offshore the State of North Carolina including blocks 423, 467, 511, and 554 on protraction diagram NI 18-2; and,

WHEREAS, Mobil intends to explore these leases pursuant to section 11 of the OCSLA, as amended, 43 U.S.C. 1340; and,

WHEREAS, Mobil has negotiated with and may unitize its lease interests with the interests of some or all of the following lessees including Amerada Hess, Marathon, Chevron, Conoco, Occidental, Shell, and Union for lease blocks in the same general area as Mobil's leases, thereby becoming the unit operator; and

WHEREAS, Mobil must submit to the MMS for review and approval an Exploration Plan (EP) pursuant to section 11(c)(1) of the OCSLA, 43 U.S.C. 1340(c)(1) prior to conducting its exploration activities; and,

WHEREAS, the MMS must review the environmental impacts of Mobil's EP pursuant to section 11(c)(1) of the OCSLA, 43 U.S.C. 1340(c)(1), and the National Environmental Policy Act (NEPA), prior to approving, disapproving, or requiring modification of the EP; and,

WHEREAS, pursuant to section 11(c)(1) of the OCSLA, 43 U.S.C. 1340(c)(1), the MMS must approve, disapprove, or require modification of Mobil's EP within thirty days of the date on which Mobil's EP is deemed submitted; and,

WHEREAS, Mobil must submit its certification that the activities described in detail in its EP are consistent with the State's coastal management program (CMP) pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456(c)(3)(B); and,

WHEREAS, the State must review the activities described in detail in Mobil's EP for consistency with the State's CMP pursuant to section 307 (c)(3)(B) of the CZMA, 16 U.S.C. 1456(c)(3)(B); and,

WHEREAS, the MMS may not issue permits for any exploration activities contained in Mobil's EP prior to receiving the State's concurrence with Mobil's consistency certification or until such concurrence may be conclusively presumed, or until the Secretary of Commerce makes the findings set forth in section 307(c)(3)(B) of the CZMA, 16 U.S.C. 1456(c)(3)(B); and,

WHEREAS, the Environmental Report which MMS will prepare under this agreement will address a broader range of State concerns than MMS could consider in an environmental impact statement prepared under NEPA;

THEREFORE, the State, Mobil, and the MMS hereby agree to the following:

II

THE MMS agrees to:

1. Use the draft outline of the Environmental Report (ER), which is attached hereto and made a part of this memorandum as Attachment B, as the starting point for the consultation process in which the State and MMS will participate and by which the contents of the ER will be determined to meet the specific needs of the State or MMS;

2. Prepare an ER which will assess, as a minimum, the environmental impacts of Mobil's EP and the potential 21-block unit as described in Part I, the report from the oil spill risk analysis modeling for mid-Atlantic Lease Sale 121, the potentially affected coastal environment, the effects associated with exploratory drilling for the initial well and all reasonably foreseeable delineation wells, the potential impacts of spills of oil or gas during drilling operations on the North Carolina coastal environment, and such additional issues as may be agreed to by the State and MMS;

3. Submit to the State on July 17, 1989, the report from the oil spill risk analysis modeling for mid-Atlantic Lease Sale 121, a description of the potentially affected coastal environment, and a generic description of the effects associated with exploratory drilling;

4. Participate in at least three public meetings concerning the information submitted to the State in August 1989 at a location or locations to be determined by agreement of MMS and the State;

5. According to the outline submitted to the State, prepare a draft ER for publication and review and comment by the State and the public on November 1, 1989;

6. Participate in at least three public hearings concerning the draft ER during the week of December 4, 1989, at a location or locations to be determined by agreement of MMS and the State;

7. After consideration of comments on the draft ER, prepare a final ER for submission to the State by February 1, 1990;

8. Determine pursuant to 30 C.F.R. 250.33(e) whether Mobil's final EP should be deemed submitted, transmit the EP to the State on the date the EP is deemed submitted, and begin preparation of the Environmental Assessment (EA);

9. Review comments on the EP submitted by the Governor after his 20-day review;

10. Complete the EA, and approve, disapprove, or require modification of Mobil's EP within 30 days of the date the EP is deemed submitted, if no other NEPA document is required;

11. Prepare an ER with the scope and process described on the first EP to be submitted on any of the

lease blocks listed in the opening paragraph of this memorandum of understanding if the Mobil EP is not the first EP, for the listed lease blocks, to be reviewed by MMS. However, if the lessee submitting the EP does not agree to the process set forth in Article IV of this agreement, then MMS and the State will consult immediately to identify a mutually agreeable alternative process;

12. Issue a suspension of operations for any of those nineteen leases due to expire on August 31, 1991, which are included in the draft EP. The suspension will not prevent the conduct of preliminary activities as defined in 30 C.F.R. 250.31 (1988). The suspension will be directed by the Regional Supervisor under 30 C.F.R. 250.10 (b)(4). It will be effective on the date Mobil submits the draft EP under this agreement and will expire on February 1, 1990, or on the date MMS submits the final ER to the State, whichever is later;

13. If the State objects to Mobil's certification of consistency, or if any other administrative or judicial challenges or appeals arise, or if the issuance of the permits for Mobil's exploration activities is delayed due to any of the other circumstances contemplated by 30 C.F.R. § 250.10, upon Mobil's application, issue additional suspensions of operations, pursuant to 30 C.F.R. § 250.10, to allow for the resolution of such matters and to allow Mobil two drilling seasons under the EP thereafter. For the purpose of this paragraph, a drilling season is the period of May 1 through October 31.

III

THE STATE agrees to:

1. Provide data agreed to in a timely manner;

2. Participate in public meetings concerning the information submitted to the State in August 1989 at a loca-

tion or locations to be determined by agreement of MMS and the State;

3. Participate in public hearings concerning the draft ER and draft EP during the week of December 4, 1989, at a location or locations to be determined by agreement of MMS and the State;

4. Begin its CZMA consistency review of Mobil's final EP on the date of receipt of the final EP from the MMS; and,

5. Complete its CZMA consistency review within seventy-five (75) days of receipt of the EP, and on that day issue its concurrence with or objection to Mobil's consistency certification.

IV

MOBIL agrees:

1. To submit a non-binding draft EP on September 1, 1989, including all documentation required by law and such additional supporting information and documentation as shall be hereafter agreed to by the parties to this agreement; and,

2. Not to submit a final EP to the MMS before January 18, 1990.

V

GENERAL AGREEMENT OF THE PARTIES:

1. Time being of the essence, all dates contained in the foregoing sections II-IV are subject to change only pursuant to subsequent written agreement of the parties, provided, however, that the time between each step depicted in Attachment A shall remain constant.

2. By entering into this agreement, the State of North Carolina has not waived any legal remedies it may have

to challenge the approval of Mobil's EP or related permits and approvals for activities described in the plan. The Department of the Interior has not waived any defenses or remedies it may have if the State files such a challenge. Mobil Oil Corporation and the co-lessees of the leases included in the EP or unit have not waived any rights, defenses, or remedies they may have with respect to their exploration of their leases.

APPROVED:

Minerals Management Service

/s/ [Illegible]
Acting Director

Date: 7-11-89

State of North Carolina

/s/ James G. Martin
Governor

Date: 7-12-89

Mobil Oil Corporation

/s/ [Illegible]

Date: 7-11-87

/s/ [Illegible]
Secretary,
Department of Administration

Date: 7-12-89

/s/ [Illegible]
Attorney General

Date: 7-12-89

NORTH CAROLINA
DEPARTMENT OF ADMINISTRATION

James G. Martin, Governor Outer Continental Shelf Office
James S. Lofton, Secretary Donna D. Moffitt, Director

November 20, 1989

MEMORANDUM

TO: Secretary Jim Lofton
Secretary Bill Cobey
Phil Kirk/Nancy Temple
Tim Pittman

Donna Moffitt /s/ Donna

SUBJECT: Opportunity for Official State Comment on MMS' Draft Environmental Report

ACTION ITEM: The Minerals Management Service (MMS) will be holding its public hearings December 4-7 on the draft Environmental Report (ER) that was prepared pursuant to the MMS/N.C./Mobil Memorandum of Understanding. The State has not had a major public statement since the announcement of the signing of the MOU. Our next opportunity for a public statement is during MMS' public hearings. The purpose of this memorandum is to alert you to the fact that the opportunity exists for the State to make a strong statement—even going so far as asking for the timeline to be suspended while MMS tries to do a better job on the next version of the ER—and to ask that you consider who the appropriate spokesperson should be to deliver the State's comments.

BACKGROUND: Several major events are causing more and more focus to be placed on North Carolina and the

Mobil project. Examples are Rep. Barbara Boxer's bill to be introduced in Congress today in which oil and gas activities would be banned out to 175 miles off the N.C. coast (we have no idea where this figure came from), and the 21 lease blocks in the Manteo exploration unit are specifically identified for possible buy back; the brand new National Research Council (NRC) of the Academies of Sciences and Engineering report which is very damaging to the offshore oil and gas program and very critical of (1) the inherent conflict of interest created as a result of the agency that is responsible for opening up the OCS for oil and gas development (i.e., MMS) also preparing the environmental baseline data, and (2) MMS' lack of adequate environmental and socio-economic data to conduct leases off the California and Florida coasts (The NRC report focused only on Calif. and Fla. but there has already been national press coverage about how this report has obvious implications for the Mobil exploration off our coast. I have attached for you [sic] review an excellent analysis by Clark Wright of the Ocean Unit for the NRC's major findings as they relate to Mobil's proposal and MMS' environmental report.); and Rep. George Miller of California's call for public hearings (Congressman Rose is asking him to consider holding one in N.C. in 1990) on significantly amending the Outer Continental Shelf Lands Act to give coastal states more authority in the oil and gas program. So far we have declined to comment on any of the above items, nor have we commented publicly on Mobil's draft Exploration Plan or MMS' draft Environmental Report, and the pressure is mounting for the State to say something!

ANALYSIS: Our review of MMS environmental report is that it violates the MOU in its adequacy of analysis and scope of the alternatives presented, i.e., it impermissibly breaks down the environmental review into a one-

well scenario and a seven-well scenario which is contrary to the requirements of the MOU; it is a very poorly prepared document with many errors, omissions, and dated material; the data and analysis presented on many topics is not focused on the resources or conditions existing off our coast but instead is a generic presentation of information; it arbitrarily dismisses or ignores significant data that the State provided about our own resources onshore and offshore; and it arbitrarily selects data that is favorable to the MMS point of view that neither Mobil's test well nor the 6 delineation wells will have significant or long term impacts while ignoring data that is unfavorable to this predetermined point of view of MMS'.

As you might expect, the public is going to have severe and justified criticism of the draft ER and of the State for believing that MMS could produce an adequate and objective "custom made" environmental analysis of Mobil's proposal and potential future development. The NRC report certainly lends credence to this view. It seems apparent that there was insufficient time to prepare such a document adequately and we ought to ask for a suspension of the timeline while MMS prepares another draft, or takes significantly longer to complete the final ER, or contracts with an independent consultant to finish the environmental review and analysis. A suspension of the timeline will not harm Mobil, and may in fact be beneficial to Mobil, because its leases are suspended during the time that the ER is being prepared. From what we gather from Mobil's comments to us, Mobil is looking for an excuse not to drill next year anyway, and this could take some of the pressure off them. It's a near certainty that, regardless of what happens on the draft ER and MOU timeline, Mobil will not be drilling before Spring 1991 at the earliest.

It seems clear that whoever has the strongest statement at the first public hearing in Manteo will get the publicity. We ought to consider the appropriateness of the State leading off the first public hearing at 3:00 p.m. on December 4 in Manteo with a strong statement.

I look forward to your thoughts on this matter.

Attachment

APPENDIX A

UNIQUE FACTS REGARDING MOBIL'S PROPOSED EXPLORATION

The factors supporting the State's unique factual situation allowing us to argue that in this one situation, an EIS should be prepared for exploration activities:

The age of the existing lease sale EIS

The inadequate discussion of material issues in the existing lease sale EIS and subsequent lease sale EISs for the same geographic area

The express language in the lease sale EIS providing for the possibility of an EIS at the exploration stage

The "frontier" nature of offshore drilling off the North Carolina coast

Unique drill site conditions including the depth of the water, the steepness of the sea floor, known geohazards existing in the general area, the unpredictability and severity of the weather, the swiftness and unpredictability of the ocean currents, the proximity of a prime recreational fishing area, and the proximity of spawning grounds for commercially significant fishing species such as menhaden

The unknown character (oil, gas, or sour gas) and potential huge size of the hydrocarbon deposit

APPENDIX B

STATE'S MAJOR CONCERNS

The major concerns of the State with respect to the exploratory drilling proposal can be grouped into four categories. These are: (1) site-specific or project-specific concerns either inadequately addressed or not addressed in prior environmental documents; (2) flawed analysis based either on erroneous or incomplete information contained in existing environmental documents; (3) new information or changed circumstances which are material to a proper analysis of impacts; and (4) unreviewed impacts. The following is a detailed discussion of the State's concerns under each category.

SITE SPECIFIC CONCERNS

The oceanographic conditions where Mobil wants to drill are extremely dynamic. The unusual current regime could result in operational problems during drilling and unpredictable dispersion patterns and water column suspension of drilling muds and spilled oil. Gulf Stream currents fluctuate between 2 and 5 knots, spin-off eddies sweep across the site on the average of every 2 to 10 days, and waves approach 25 feet during Nor'easters. Thus, the State believes a slightly different drilling window whereby Mobil begins drilling in May instead of March is better. The sea bottom at the drill site is characterized by extremely rugged conditions, canyons, a continental slope of 15 degrees, and known slope failures nearby. The area is known to contain frozen gas hydrates in the shallow subbottom which, if encountered during drilling, can affect the well casing integrity and therefore Mobil's ability to prevent a loss of well control. None of the existing lease sale documents have adequately analyzed the effects of all these adverse conditions, taken to-

gether, upon an oil company's ability to maintain safe drilling and well control.

The site is also biologically rich and diverse because of the upwelling currents and other unique conditions set up by the separation of the Gulf Stream from the continental shelf. It is locally known as "The Point" and is one of the most intensely used recreational fishing sites on the whole East Coast. Significant commercial fishing activities also occur in the Point area. Whale, porpoise, and sea turtle migration routes pass through this area which is also an important site of concentrated sea bird activity. Again, no previous lease sale EIS has identified the concentration of diverse biological resources located in the Point area. The potential impacts to these biologically important resources from drilling in that area will have to be properly addressed in Mobil's environmental report.

FLAWED ANALYSIS

Oil spill risk analysis conducted for past lease sale EISs was inaccurate because it failed to account for Gulf Stream spin-off eddies. If a spill were to occur during drilling and the oil became entrained in a spin-off eddy, the oil could be brought to North Carolina's coast faster and in a different trajectory than predicted in the EIS documents. Because of this erroneous analysis, MMS has been sponsoring research pursuant to a 1983 memorandum of understanding between MMS and North Carolina to improve its ocean circulation model, adjust its oil spill risk analysis model, and gather better field data on the eddies. Until those studies are completed and the results verified by independent experts, the State will be unable to respond favorably to the Mobil oil spill contingency plan, which is an essential component of the overall exploration plan. In addition, the oil spill plan must provide for the fullest measure of protection possible for our fragile near-shore and estuarine resources.

Another area of erroneous analysis involves cumulative impact analysis. All previous environmental documents discuss impacts in a retrospective manner rather than predicting potential impacts from past, current, and foreseeable future oil and gas activities. Impacts from other ocean uses are not analyzed in a cumulative manner nor are impacts analyzed from and through all Atlantic OCS regions. Such spatially cumulative impacts are especially important in analyzing total impacts upon migratory species. This concern was specifically upheld in a recent federal court decision involving the latest 5-year leasing program.

Current and projected populations for coastal counties have been erroneously estimated in previous EISs. Total population was significantly underestimated and seasonal variations in population were not considered. The coastal counties are the most rapidly growing areas of the State and development pressures are already adversely impacting the State's coastal environments. These existing stresses must be taken as a given in analyzing the additional impacts that will, or potentially may, occur as a result of offshore oil and gas drilling.

NEW INFORMATION OF CHANGED CIRCUMSTANCES

One of the most important changes in the informational baseline used in the previous lease sale EISs involves the present prediction that gas is the most likely discovery rather than oil, and that the discovery may be as large as 5 trillion cubic feet. Previous environmental documents focused on an oil discovery, not a gas strike as

Mobil is now predicting, and certainly not of that size. The total gas reserves estimated in both the Lease Sale 56 EIS and the newest 5-year OCS leasing program for our entire OCS planning region are roughly equivalent to what Mobil now estimates for this one project offshore North Carolina alone. If the 21 blocks are formed into one unit it will be the largest unit ever approved on the U.S. OCS and if a discovery were made of the size predicted, it would be one of the world's largest gas reservoirs.

Additionally, the Lease Sale 56 EIS states that oil and gas activities will not adversely impact local community infrastructure because existing community services can meet current demand. This original assumption is clearly invalid as shown by the Morehead City example where a moratorium exists on additional waste water treatment plant hook-ups. The original impact analysis failed to accurately reflect the growing development pressures currently being experienced by North Carolina coastal communities. According to the original Lease Sale 56 EIS, CEIP (Coastal Energy Impact Program) planning monies could be used to help mitigate any anticipated community infrastructure impacts. Unfortunately, CEIP money has not been available from the federal government since late 1982.

UNREVIEWED IMPACTS

There is a complete lack of analysis of potential impacts to public health and safety in any of the previous environmental documents, particularly related to development and production of natural gas resources. Because the focus of past environmental documents was on oil instead of gas, there has been no analysis of impacts from a potential sour gas, or hydrogen sulfide, discovery. Hydrogen sulfide gas is highly poisonous and requires extensive

safety precautions. The Mobil drilling site is in an area considered by MMS regulation to be an area of unknown hydrogen sulfide potential and thus this concern must be addressed.

Another area involving unreviewed impacts concerns threatened or endangered species. Both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service consulted with Interior during the preparation of the Lease Sale 56 document under authority provided in Section 7 of the Endangered Species Act of 1973. Both agencies indicated at that time that if new species which may be affected should be listed, or additional pertinent information becomes available, or if there are significant modifications to the described action, the Section 7 consultation must be reinitiated. The State is concerned newly listed species may be present in the drilling area and that potential impacts of exploratory activities are not adequately addressed in the Lease Sale 56 EIS biological opinions.

There are other unreviewed impacts that the State is currently investigating to determine the potential for impact. These include noise, radioactive disposal of drilling pipe and other material, and shore-based impacts of onshore disposal of any drilling muds that may be contaminated with substances unauthorized for ocean disposal.

Additionally, the State desires the higher level for preparation, review, and comment provided by an EIS such as disclosure, dissemination and analysis of impact information, as well as a discussion of alternatives and mitigation measures.

MOBIL EXPLORATION & PRODUCING U.S. INC.

April 17, 1990

HAND DELIVERED

Hon. William W. Cobey, Jr.
Secretary—Department of Environment,
Health and Natural Resources
State of North Carolina
512 North Salisbury Street
Raleigh, North Carolina 27611

Re: NPDES Number NC0052523
Mobil Oil Exploration & Producing
Southeast Inc. (MOEPSI)
Manteo Area Block 467, Lease OCS-A-0236

Dear Secretary Cobey:

On August 18, 1989, Mobil Exploration & Producing U.S. Inc. (MEPUS), on behalf of its affiliate Mobil Oil Exploration & Producing Southeast Inc. (MOEPSI), submitted an NPDES Permit Application for proposed exploratory drilling activities in Manteo Area Block 467, Lease OCS A-0236. On October 11, 1989, the United States Department of Commerce's Office of Ocean and Coastal Resource Management (OCRM), at the request of the State of North Carolina, granted North Carolina permission to review the proposed discharges addressed in Mobil's NPDES Permit Application as an unlisted activity for purposes of coastal zone consistency review.

Accordingly, pursuant to the federal Coastal Zone Management Act's regulations, specifically 15 CFR § 930.54(e), MEPUS has submitted to the EPA and the OCRM its Statement of Coastal Zone Consistency Certification with supporting information and documentation. In accordance with the regulatory provisions cited, MEPUS also submits to the State of North Carolina with this correspondence a copy of the Coastal Zone Consistency Certification and necessary supporting data and information required under the Federal and State regulations.

It is Mobil's understanding that, pursuant to 15 CFR § 930.54(e) and OCRM's February 9, 1990 letter/ruling, North Caorlina shall have three months from today, or until July 17, 1990, to perform its consistency review.

If you have any questions on the materials attached hereto, please do not hesitate to contact me.

Very truly yours,

/s/ William C. Whittemore
WILLIAM C. WHITTEMORE

WCW/rt

cc: Mr. Donald E. Critchfield
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Office of Ocean & Coastal Resource Management
1825 Connecticut Ave. N.W.—Rm. 706
Washington, DC 20235

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Raleigh, NC 27601

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release June 26, 1990

FACT SHEET

PRESIDENTIAL DECISIONS CONCERNING OIL AND GAS DEVELOPMENT ON THE OUTER CONTINENTAL SHELF

The President today announced a series of decisions related to oil and gas development on the outer continental shelf (OCS). The President believes that these decisions strike a needed balance between development of the Nation's important domestic energy resources and protection of the environment in sensitive areas.

Decisions by the President on Three Pending Sales.

Decision for California Sales

- Cancel all sales scheduled for 1990, 1991 and 1992 offshore California, including Sale 91 off the coast of northern California and Sale 95 off the coast of southern California.
- Conduct additional oceanographic and socioeconomic studies as recommended by the National Academy of Sciences in a review conducted for the interagency Task Force on Leasing and Development of the OCS (the Task Force). These studies should take 3 to 4 years.
- Exclude more than 99 percent of the tracts (including *all of the Sale 91 area* and *all of the Sale 95 area south of the Santa Barbara Channel*) off California

from consideration for any lease until *after the year 2000*. The Interior Department has identified 87 tracts off the coast of southern California within the Sale 95 area that have high resource potential. These tracts are located in the Santa Maria Basin and Santa Barbara Channel, where oil and gas production is currently underway. They comprise approximately 0.7 percent of all of the tracts off California, or 0.67 percent of the 74 million total acres off California that could be leased and 1.63 percent of the 30.5 million acres in the Southern California Planning Area. These tracts will not be available for leasing consideration *until after January 1, 1996* and completion of the additional studies. They will then be available only if development appears viable based on the guiding principles outlined below and the results of the studies.

Decision for Florida

- Cancel Sale 116, Part II, and exclude the area from consideration for any lease sale until *after the year 2000*. Any development after the year 2000 would be pursued only if it appears viable based on the guiding principles outlined below and the results of additional studies.
- Conduct additional oceanographic, ecological and socioeconomic studies as recommended by the National Academy of Sciences in its review. These studies should be completed within 5 to 6 years.
- Begin cancellation of *existing* leases off Florida and initiate discussions with the State of Florida for its participation in a joint federal-state buy-back of the leases.

Guiding Principles

The President's decisions were based on the following principles:

(1) *Adequate Information and Analysis*—Adequate scientific and technical information regarding the resource potential of each area considered for leasing and the environmental, social and economic effects of oil and gas activity must be available and subjected to rigorous scrutiny before decisions are made. No new leasing should take place without such information and analysis.

(2) *Environmental Sensitivity*—Certain areas off our coasts represent unique natural resources. In those areas even the small risks posed by oil and gas development may be too great. In other areas where science and experience and new recovery technologies show development may be safe, development will be considered.

(3) *Resource Potential*—Priority for development should be given to those areas with the greatest resource potential. Given the inexact nature of resource estimation, particularly offshore, priority should be given to those areas where earlier development has proven the existence of economically recoverable reserves.

(4) *Energy Requirements*—The requirements of our nation's economy for energy and the overall costs and

* * * *

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

June 26, 1990

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Citizens of Florida and California have been waiting for many months for the announcement you made this afternoon imposing an offshore oil and gas leasing moratorium off their coastlines that will last throughout the remainder of this decade. I am sure they were pleased by your announcement, as were the citizens of Oregon, Washington, and New England who, *unexpectedly*, were also included in the moratorium.

Given the inclusion of areas that we had believed were beyond the scope of the Task Force's recommendations, I am equally sure that the citizens of the Atlantic seaboard were disheartened to find that leasing is still a possibility adjacent to their shores.

Therefore, I urgently request that you revise your announcement to include North Carolina and the other states of the Mid- and South Atlantic planning areas in this leasing moratorium. This makes sense for the very same reasons the other areas of the country were included. In addition, offshore North Carolina and the surrounding waters are frontier areas which have *never* been subjected to the kind of environmental studies which—though now proven inadequate—have already taken place off California and Florida.

Your announcement today was based on the need to protect the special environmental attributes of the moratorium areas. Mr. President, North Carolina's Outer Banks are home to Cape Hatteras National Seashore, Cape Lookout National Seashore, the U.S.S. MONITOR National Marine Sanctuary, numerous National Wildlife Refuges, and the Albemarle-Pamlico estuary which has been designated an estuary of national significance. Individually, and certainly combined, these areas also deserve your protection.

At your earliest possible convenience I would like to personally show you the Outer Banks and introduce you to the thousands of North Carolinians who, with me, share your concern for our nation's fragile coastal areas.

Sincerely,

/s/ Walter B. Jones
WALTER B. JONES
Chairman

[State Logo]

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
Raleigh 27603-8001

James C. Martin
Governor

June 27, 1990

The Honorable George Bush
The White House
Washington, D.C. 20500

Dear Mr. President:

Yesterday, I spoke by phone with Mr. Andrew Card, your director of Intergovernmental Relations, requesting that North Carolina be included in the moratorium on oil and gas leasing and development that you announced earlier in the day. Again today, Robert Grady of OMU phoned me for further information to present to you.

I am writing you to underscore that request. Clearly, the guiding principles employed in your decision apply to North Carolina as well.

I would also suggest, Mr. President, that the most meaningful—and pleasurable—way we can show you how vital our coast and the maritime economy it produces are to our citizens is for you to see for yourself.

With that in mind, I would like to invite you to go deep-sea fishing with me at the site Mobil Oil Corp. is considering for exploratory test drilling. If this meets with your approval, we will arrange it to fit your schedule.

This matter is of great importance to North Carolina. I have been wrestling with the issue of offshore drilling for many months, trying to balance our nation's fuel needs

with my unwavering conviction that we must preserve and protect our state's coast.

Your decision that our nation's oil and gas reserves are such that we can await a ten year moratorium on offshore exploration in non-producing areas convinces me that there is no need for North Carolina to be excluded from your moratorium. Since our state has the only oil or gas drilling site on the entire East Coast that wasn't included in your announcement, I respectfully request that the moratorium order be amended to include North Carolina.

I believe you will be able to get a strong grasp of the situation—as well as a marlin or king mackerel or two—if you can find time to join me. My fellow North Carolinians and I would be honored to show you personally the Atlantic waters we are committed to protecting.

Thank you very much, Mr. President, for your consideration.

Sincerely,
/s/ Jim Martin
JAMES C. MARTIN

[State Logo]

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT, HEALTH,
AND NATURAL RESOURCES
DIVISION OF COASTAL MANAGEMENT
225 North McDowell Street
Raleigh, North Carolina 27602

James C. Martin, Governor
William W. Cobey, Jr., Secretary

Roger N. Schecter
Director

DRAFT

July 16, 1990

Mr. William C. Whittemore, Senior Counsel
Mobil Exploration & Producing U.S., Inc.
1250 Poydras Plaza
New Orleans, LA 70113-1892
Dear Mr. Whittemore:

This letter provides the State of North Carolina's official response to Mobil's April 17, 1990 consistency certification in which Mobil deemed its proposed discharge activities consistent with North Carolina's federally approved Coastal Management Program. Mobil's certification is for NPDES Permit Application Number NC 0052523, which describes proposed exploratory drilling discharge activities in Manteo Area Block 467, Lease OCS A-0236. The consistency certification was received by the State on 4/17/90 and assigned the number CD90-10 for review purposes.

Based upon our review of the certification and other information sources available (see Attachment 1), the State objects to Mobil's certification that the proposed activity is consistent with the North Carolina Coastal

Management Program. Our objection is based on Mobil's failure to provide data and information necessary to allow the State to conduct a proper consistency review of the proposal on its merits. The State's informational objections are made pursuant to 15 CFA Sections 930.54(e), 930.58, 930.60(a) and 930.64(d).

Since the Fall of 1988, North Carolina has expressed concerns to Mobil about informational deficiencies related to the proposed drilling activities in Manteo Area Block 467, Lease OCS A-0326. In December of 1989, Mobil was provided with a written list of fisheries studies viewed as essential by the Division of Marine Fisheries in order to address informational concerns related to assessment of all potential exploratory drilling impacts on fisheries resources. That study list was subsequently reduced to four parts which were more directly relevant to an assessment of potential drilling discharge impacts. The four part study was also set out in North Carolina's January 31, 1990 formal comments to EPA Region IV. The basic objectives of the four part study were further clarified in my letter to Mobil dated 4/12/90 (see Attachment 2). After discussions between Mobil and the State, the four part study was focused on discharge impacts and clarified once again (see Attachment 3) in Governor Martin's comments to EPA on 6/1/90 and supplemented by the Governor's letter of 7/13/90 to EPA (see Attachment 4). As of the date of this letter, the state has not received any of the site-specific fisheries data required by the four part study described above.

The State had previously determined that the NPDES permit activity may have potentially significant impacts on North Carolina's coastal resources. This position was substantiated by the U.S. Department of Commerce in their 10/11/89 letter granting permission to the State for a consistency review of Mobil's NPDES permit with a

finding that the activity "can be reasonably expected to affect the State's coastal resources" (see Attachment 5).

The State specified four North Carolina Coastal Management Program enforceable policies and standards particularly relevant to the NPDES permit consistency certification review process in our 4/12/90 letter to Mobil. These are extracted from the eight criteria listed in our federally approved 1979 Program Amendments which states that the criteria "will be used to judge the consistency of OCS development with the CM program." The four particularly relevant criteria are:

—Risks of environmental harm to fish spawning areas are assessed and minimized.

—Potential damage or interference with traditional fishing grounds or areas with high biological/recreational value (reefs, rock outcrops) is avoided.

—Placement of structures in geologically hazardous or biologically sensitive areas is avoided.

—Potential wildlife destruction or relocation is assessed and minimized.

The potential impacts of Mobil's proposed discharge activities upon the land and water uses of our coastal zone cannot presently be assessed against these four criteria because of the company's failure to provide the requested information. The requested information is necessary to allow proper determinations to be made regarding the biological importance of the proposed drill site area to the State's fisheries, the importance of the area to birds and marine mammals, and the economic importance of the proposed drill site area (which is located in or near the area locally known as "The Point") to the State's fishermen. Detailed review comments and analysis of the significance of the proposed drill site to biological resources by the Division of Marine Fisheries are attached (see Attachment 6).

Comments received from other State Resource Management Agencies during our current review of Mobil's consistency certification support our 4/12/90 conclusion that the information provided is insufficient. Our reviewers have also identified the following informational deficiencies and additional informational needs. Again, these informational needs are essential to our ability to successfully apply the four criteria listed above for judging the consistency of OCS development.

Mobil has used computer models to address the risks of environmental harm to fish spawning areas. The State has consistently maintained that the resources impacts cannot be documented or projected without adequate site specific baseline data. The four part fisheries studies are designed to provide the minimal site specific data which can reasonably be used to project probable impacts on fisheries resources from Mobil's proposed exploratory drilling discharges. Further, the State has maintained that Mobil has met fully documented assumptions used in their models and that the applicability of the models therefore cannot be judged (see comments provided by the Division of Environmental Management in Attachment 7 and the report prepared by Dr. Gerald S. Janowitz for the NC Outer Continental Shelf Office May 8, 1989 in Attachment 8).

The NC Division of Parks and Recreation pointed out that the use of *Fundulus heteroclitus*, a salt marsh, estuarine, and tidal creek species is unsuitable for determining toxicity of drilling muds to oceanic fish or invertebrates since, unlike oceanic species, *Fundulus* eggs, larvae, and adults are normally associated with high turbidities and sedimentation rates. Toxicity information must be provided for species adapted to the oceanic environmental conditions found at the proposed drill site.

The North Carolina Wildlife Resources Commission has determined that the following information is necessary to determine that potential wildlife destruction or relocation is assessed and minimized:

1. Utilization of the project site by pelagic birds, sea turtles and marine mammals. This should include information regarding numbers of individuals, numbers of species, and activities by species at the project site.
2. Past or ongoing research regarding impacts of oil and gas exploration discharges on wildlife resources.
3. Plans for remedial action if adverse impacts are detected once drilling activities are initiated.

Finally, EPA Region IV has informally indicated to Mobil and the State its intent to provide a "Response to Comments" document in which the agency will propose final discharge permit conditions, limitations, and prohibitions. As of this date, EPA Region IV has not issued this response. Therefore, in addition to the informational deficiencies outlined above, the State does not at this time know what EPA proposes for final discharge permit conditions, or whether EPA will impose the study requirements and other conditions itemized in the Governor's June 1, 1990 comments.

Because the State's objection is based upon Mobil's failure to provide necessary data and information, the only alternative available is for Mobil to provide the information needs identified. Should Mobil subsequently provide the required information, the State will then be in a position to review the proposed activity to determine whether it may be conducted in a manner consistent with North Carolina's Coastal Management Program.

This letter serves as our formal notice that we have found the proposed activity inconsistent with the North

Carolina Coastal Management Program. A copy will be sent to EPA Region IV as notification that pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, NPDES Permit Number NC0052523 cannot be issued. This letter also serves as notice to Mobil that our finding may be appealed to the Secretary, U.S. Department of Commerce, Washington, DC. The appeal must be filed within 30 days of receipt of this letter and must specifically address the applicant's belief that either (1) the activity is consistent with the objectives or purposes of the Federal Coastal Zone Management Act; or (2) the activity is necessary in the interest of national security.

Should you have questions regarding our finding or the appeal procedure, please contact me at (919)733-2293.

Sincerely,

/s/ Original signed by:
ROGER N. SCHECTER

Attachments

cc: Governor James G. Martin
Secretary William W. Cobey, Jr.
Secretary James S. Lofton
NC Outer Continental Shelf Office
NC Department of Justice
NC Division of Coastal Management,
Morehead Field Office
NC Division of Coastal Management,
Elizabeth City Field Office
NC Division of Environmental Management
NC Division of Marine Fisheries
NC Wildlife Resources Commission
NC Division of Parks and Recreation

Mr. Ray Cunningham
Water Management Division
EPA Region IV
346 Courtland Street
Atlanta, GA 30365

Mr. Timothy R.E. Keeney
U.S. Department of Commerce, OCRM
Washington, DC 20235

[DOI Logo]

THE SECRETARY OF THE INTERIOR
Washington

August 1, 1990

Honorable Ralph-Regula
House of Representatives
Washington, D.C. 20515

Dear Ralph,

The House Rules Committee will soon consider a rule for House consideration of the Conference Report to accompany H.R. 1465, the Oil Pollution Liability and Compensation Act of 1990.

I am informed an amendment (Sec. 6003), proposed by Representative Walter B. Jones of North Carolina, was added during the conference which would effectively delay any exploratory activity off the coast of North Carolina until late 1991. The Administration strongly opposes the inclusion of this amendment on the oil spill legislation since it is a de facto moratorium on any exploratory activity in this area, without regard to the relatively benign environmental effects of that activity.

The President has announced his comprehensive policy regarding Outer Continental Shelf (OCS) development and has placed a number of areas of the OCS off limits to further leasing, exploration, and development until the next century. The President's decision will restructure the OCS program by more carefully targeting areas with truly promising resource potential, obtaining information adequate to ensure that oil and gas development proceeds in an environmentally sound manner, and being sensitive to the concerns and needs of local areas affected by offshore

development. The Administration's actions are definitive efforts to resolve the near- and mid-term issues associated with offshore leasing. This amendment undermines this effort.

The Administration opposes the imposition of any additional legislative moratoria regardless of the legislative vehicle. I understand the amendment was not considered by the House or the Senate during debate on the oil spill legislation. The amendment is clearly outside the scope of the conference, and it should be deleted from the conference report.

I believe a rule should be granted which would allow for the removal of this amendment during consideration of the conference report by the House of Representatives.

Sincerely,

/s/ Manuel Lujan Jr.

EXPLORATION PLAN

ATLANTIC: OFFSHORE NORTH CAROLINA

MANTEO AREA BLOCK 467
OCS-A 0236

LESSEE/OPERATOR

MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST INC. (MOEPSI)

20 AUGUST 1990

VOLUME 1 OF 3
EXPLORATION PLAN

EXECUTIVE SUMMARY

INTRODUCTION

In 1981, the Minerals Management Service (MMS) of the U. S. Department of the Interior conducted a Mid-Atlantic Region lease sale off the coast of the Carolinas. In this sale, Mobil and its partners bid on and successfully acquired 5 tracts for a total lease bonus of $234.8 million. Four of these five blocks were situated about 45 miles northeast of Cape Hatteras, North Carolina, and included Block 467, which received the highest bonus bid of the sale, $103.8 million.

In the fall of 1988, Mobil and partners informed the MMS and the State of North Carolina of their intent to drill a single exploratory well in Block 467. Considerable discussion ensued regarding regulatory procedures and environmental concerns. In lieu of requests by North Carolina for an unprecedented exploration stage Environmental Impact Statement (EIS), the State, MMS, and Mobil, in July 1989, entered into a Memorandum of Understand-

ing (MOU) which provided that the MMS would prepare an environmental report outlining potential impacts at both the exploration and production stages. Mobil and its partners also agreed to submit in advance a Draft Exploration Plan (EP), and the State agreed to conduct public hearings on this Draft Plan and to shorten the consistency review period for the Final EP.

On 1 September 1989, Mobil submitted its Draft EP to the MMS. Copies of the Draft EP were also provided to North Carolina state officials who placed copies in numerous public locations, so that citizens of North Carolina would have the opportunity to review and offer comments to Mobil on the proposed plan. After nearly a year of public review and comments and subsequent plan revision, Mobil, in accordance with Federal law and the special MOU, is now submitting the Final EP.

This document is organized in accordance with the format specified by federal regulations. The Final EP includes additional information made available since the submission of the original Draft EP Plan and effectively responds to various state and public concerns through expanded discussion and/or clarification of material presented in the Draft EP Plan. This executive summary is a condensed discussion of the EP's key components in layman's language.

PROJECT DESCRIPTION

Mobil proposes to drill a single exploratory well for natural gas at a site in Block 467 about 45 miles northeast of Cape Hatteras, North Carolina. The selection of this site is based on years of geological, geophysical, and environmental investigation, including efforts during the past 18 months on which Mobil and partners have spent more than $7 million. This well, which is planned to a total

depth of 14,000 feet, will be drilled by a state-of-the-art equipped drilling vessel, and will require about 3-4 months to complete. The wellsite, situated on the continental slope, is in 2,690 feet of water. The cost to complete this single well is estimated to be about $25 million.

Mobil proposes to use the existing facilities at the North Carolina Port in Morehead City as the shorebase for its exploratory drilling operations. No expansion of the port facility will be required, since existing channels and dockage are more than adequate to accommodate the anticipated traffic. Marine vessel support will include two cargo vessels (215-ft), one crew boat (125-ft), one utility vessel (120-ft), and one spill-response vessel (180-ft). The spill-response vessel will be stationed round-the-clock at the drillsite from start to finish of the drilling operations to insure protection in the unlikely event of a spill. The cargo and crew vessels will operate daily while the utility vessel will also remain at the drillsite. The Michael J. Smith Field, located in Beaufort, North Carolina, will be utilized by support helicopter operations. Air support will be provided by a twin-engine helicopter which will average two trips between the drillsite and shorebase per day.

TECHNICAL BACKGROUND

Geology

The area Mobil and partners propose to explore is located on the Norfolk Arch, a large east-west trending structural ridge extending off the North Carolina coast. The proposed wellsite is situated at the very crest of this large ridge. The target of this wildcat well is a porous rock composed of limestone which formed as part of an ancient reef trend. This reef, which existed over 140 million years ago along much of our Atlantic continental shelf, formed under conditions similar to those presently seen in the Great Barrier Reef off the east coast of Australia. To-

day, this long-dead reef is buried under approximately 8,000 feet of much younger sand and shale sediment.

Economic accumulations of gas or oil depend not only on effective traps, but also on close proximity of organic-rich source rocks. Geochemical analyses from nearby exploration wells have confirmed the presence of rock types capable of generating natural gas. Based on the structural and geochemical evidence, explorationists estimate that this particular reef structure could contain up to 5 trillion cubic feet of natural gas, or the energy equivalent of 1 billion barrels of crude oil. If proven to be the case, it would be the largest hydrocarbon discovery in the United States since the 1968 oil discovery of Prudhoe Bay, Alaska, and perhaps one of the largest single gas accumulations ever found in the lower 48 states, onshore or offshore.

Climate

Climatic conditions in this region are influenced primarily by the Bermuda-Azores high pressure system. In winter, this system migrates south which allows the frequent west to east progression of storm systems, some of which can be rather severe. As summer approaches, the Bermuda High shifts to the north, effectively deflecting regular cyclonic activity. Summer then is a time of relative stability, marked by high temperatures, low winds, and occasional bouts of showers or thunderstorms. Hurricanes can and occasionally do impact this region during the late summer or fall months, with the highest risk occurring in August and September. This exploratory well, however, will be initiated in May and completed by early August, however, which corresponds to the most stable weather window available.

Physical Oceanography

The proposed wellsite is in an area of rapidly changing bottom topography. The site itself is situated on the continental slope, which is the transition zone from the continental shelf in shallow water to the deep floor of the Atlantic Ocean. The slope off this portion of the Atlantic coast is cut by numerous east-west trending canyons and smaller ravines, and is the zone of active sediment transport from shallow to deeper water. At least three major ocean currents or water masses also converge in this area, the most dominant being the Gulf Stream. The western boundary of this huge current meanders back and forth across the area of the wellsite, with the prevailing flow from southwest to northeast. Mobil has and continues to perform current monitoring studies in the vicinity of the wellsite. The resulting information on current direction and maximum flow velocities has been utilized both to insure properly designed drilling equipment and for spill response planning.

Biology

The distribution of marine organisms occurring in the water column near the drillsite area is strongly influenced by the physical oceanography of the region. The type and quantity of small plant (phytoplankton) and animal (zooplankton) life depend on the water type present (Slope or Gulf Stream). These small organisms are a food source for larger species that in turn are eaten by larger organisms. Recreational and commercial fishing occurs in the area known as "The Point" (north of the drillsite) for billfish, dolphin, tuna, wahoo, and other species. Other marine animals, including whales, dolphins, turtles and seabirds, occur in the general area at various times of the year. Organisms at the sea surface include algae, (e.g., the brown algae *Sargassum*, protozoans, jellyfish, crustaceans, fish eggs and larvae, and other animals.

A site-specific photodocumentation survey of the bottom-dwelling (benthic) organisms was conducted in the drillsite and anchor areas by MOEPSI. The observed megafauna were numerically dominated by two species of fish (wolf eelpout and witch flounder) and a large anemone. Tubes of the colonial foraminiferan *Bathysiphon* sp. occurred in high densities on steep, seaward-facing slopes. Other recent studies in the general area also indicated high density and low diversity of organisms living on the bottom (infauna).

The water-column and bottom-dwelling organisms observed at the drillsite and anchor locations are neither unique nor endemic to the area, but rather have widespread distributions. In addition, the overall offshore area with similar biological characteristics is very large relative to the drillsite and anchor area.

POTENTIAL IMPACT FROM OFFSHORE ACTIVITIES

Much of the data collection and documentation was used to evaluate both potential impacts from normal exploration activities or impacts from unexpected occurrences such as accidents. Potential sources of such impact include:

- Drilling vessel anchoring and removal
- Presence of drilling vessel and submerged equipment
- Drilling fluid and cuttings discharges
- Other liquid discharges
- Air emissions
- Noise

Drilling Vessel

The drilling vessel utilizes a system of 8 large anchors to position and maintain itself over the wellsite. Deployment of this system will result in the anchors and attachment chains being dragged across the ocean bottom for short distances. The impacts will involve very small, localized portions of the sea floor, and a correspondingly small amount of fauna. Evidence from other offshore exploratory wellsites clearly indicates these impacts will be of short duration, and that the impacted areas will quickly recolonize by settling larvae and migrating adults from adjacent undisturbed areas.

In addition to small temporary impacts from anchors and chains, the surface presence of the drilling vessel for the projected 3-4 month period could cause some minimal disruption of recreational boating and commercial/recreational fishing. The proposed drillship is capable of rotating in any direction to face prevailing winds and waves, a maneuver which would effectively exclude only about 5 acres of ocean surface. This is obviously insignificant when compared to the hundreds of square miles utilized by fisherman in the general area. The anchor chains would not interfere with commercial or recreational fishing, because of the steep angle of descent and the extremely deep water at the site.

The drilling vessel and support boats have the potential to present obstacles to marine navigation. Support vessels will travel between the shorebase and drillsite on a daily basis, while the utility vessel and spill response-vessel will remain at the drillsite for the duration of the project. Although no designated vessel fairways pass through or in close proximity to Block 467, all vessels will operate in compliance with federal regulations, and the U.S. Coast Guard will advise all mariners of the drilling vessel loca-

tion. The probability of a vessel traffic accident due to the presence of the drillship or support vessels is extremely low.

Drilling Discharges

The discharge of drilling fluids and cuttings for all offshore wells is very carefully regulated by the U.S. Environment Protection Agency (EPA). Mobil has applied for a discharge permit for this well, and EPA is currently evaluating the potential environmental impact of the proposed discharges. Ultimately, it is the EPA which will establish the conditions for the type and quantity of allowable discharges, such that the overall impact to the surrounding marine environment will be minimized.

The actual toxicity of drilling fluids and cuttings has often been the subject of considerable debate. In reality, drilling fluid is nothing more than water mixed with natural clays, barite, (a naturally occurring mineral), and some minor chemical additives to maintain the mixture's consistency. Drill cuttings constitute nothing more than small pieces of the actual rock penetrated by the drillbit. The projected overall impact from these anticipated discharges is expected to be localized due to rapid dilution, and very minor in duration and overall extent. This assessment of impacts is consistent with the conclusions of the National Research Council (NRC). In a 1983 study entitled "Drilling Discharges in the Marine Environment," the NRC concluded "The environmental risks are small." The study panel was chaired by Dr. John D. Costlow of the Duke University Marine Laboratory in Beaufort, North Carolina. Also, air emissions from the drillship and related supply vessels will be small and well below acceptable levels established by federal regulations.

Noise

The noise from drilling operations, as with any ship, could potentially affect the behavior of marine mammals in minor ways, such as by avoidance of the immediate area and the temporary disruption of normal migratory patterns. Fish, seabirds, and sea turtles could also be affected by noise, but it is unlikely that such effects would be significant.

POTENTIAL IMPACTS FROM ONSHORE ACTIVITIES

Morehead City has been selected as the service base for this exploratory well. The daily operations of three marine support vessels will utilize the State Port at Morehead City while helicopter air support will be based out of Michael J. Smith Field in Beaufort. Supplies, including drillpipe, water and fuel, drilling mud and cement materials, and backup oil spill response equipment, will be transported by truck to Morehead City, and will require only about 4 acres of storage capacity, including room for vehicle and heavy equipment parking. A small trailer will serve as both office and living quarters for Mobil's shorebase operations manager. Additional shorebase personnel will include a marine foreman with four dispatchers and four local contract labor crews.

The expected level of onshore activity is not anticipated to have any adverse impact on the existing community, nor will it generate substantial new employment opportunities. This is consistent with a recent North Carolina Coastal Energy Impact Program study which concluded that "Temporary service bases involve minimal investment and provide little construction employment because of the tendency to locate in developed ports and use existing structures and facilities since temporary service bases are not

very large, they are not likely to have a significant impact on air and water quality, especially in a developed port."

PRECAUTIONS TO AVOID ACCIDENTAL SPILLS

The chances of a crude oil spill, or for potential damage to North Carolina's coast resulting from these proposed exploratory drilling operations, is extremely remote. The basis for such a statement is as follows:

- Our geologic knowledge, based on years of study and exploratory drilling on the U.S. east coast, clearly indicates that if any hydrocarbons have been generated, the product will be natural gas.
- Industry's safety record for offshore exploratory operations is virtually unblemished. Since moving offshore nearly 50 years ago, development of superior drilling equipment and technology has resulted in completion of over 8,000 exploration wells without a single crude oil spill from a blowout.
- As part to the proposed Exploration Plan, Mobil has designed the most comprehensive spill prevention and clean-up response. If an accidental spill of any kind were to occur, the maximum effort would be made to quickly contain and recover the spill.

Mobil has devised a comprehensive plan of clean-up response measures, which includes the following actions:

- A fully manned and equipped clean-up vessel stationed round-the-clock at the drillship from start to finish of the drilling operation. This vessel can handle spills of up to 1,000 barrels per 12-hour day.
- Back-up "state-of-the-art" equipment at Morehead City, with an additional clean-up capability of

1,000 barrels per 12-hour day that can reach the drillsite in 20 hours and intercept a spill a minimum of 12 hours before it reaches shore. Another system with 5,000 barrels per 12-hour day recovery capacity will be maintained at the shore base.

- A trailer pre-loaded with spill-response equipment located in the Oregon Inlet area.
- A procedure to commit additional national and international clean-up resources within a short period of time if necessary.

The factual evidence and past experience clearly suggests that an oil spill during drilling operations is very unlikely, and that a spill of any kind reaching the North Carolina coast is even more remote. Nevertheless, if an accident were to occur, Mobil and partners are clearly committed to whatever action is necessary to effectively contain and clean up a spill.

CONSISTENCY

Mobil's Consistency Determination (Appendix Q) provides an analysis of whether the proposed activities for Manteo Area Block 467 are consistent with the provisions of the North Carolina Coastal Management Program (NCCMP). Mobil's signed Certificate of Coastal Zone Consistency certifies that the proposed activities, described in detail in the Final EP, comply with the approved NCCMP and will be conducted in a manner consistent with the program.

CONCLUSION

The Exploration Plan for drilling this single exploratory well has been designed to minimize and mitigate, to the greatest extent possible, the effects of the project activities

on both the onshore and offshore environments. Our extensive geologic knowledge lends a high degree of certainty that this is a natural gas prospect. The planned drilling window corresponds to the most stable weather and current period. The existing literature on the aquatic life in the area has been extensively reviewed, and every known reasonable precaution has been planned to minimize impacts to this community from the discharge of cuttings and drilling fluids. Despite the low risk from an accident of spill, Mobil has designed one of the most comprehensive spill containment and clean-up measures ever contemplated by industry for an exploratory well. Finally, the very latest drilling and engineering technology will be utilized by Mobil, a company whose record of safety and environment concern is unsurpassed within the industry.

In addition to these efforts by Mobil, the MMS has developed extensive measures designed to minimize the overall impact of oil and gas activities. These measures include specific lease stipulations and regulations which must be strictly adhered to by Mobil.

Mobil is confident that by utilizing the procedures outlined in this Exploration Plan, the proposed exploratory well can be drilled safely and without any harmful impacts to North Carolina's valuable coastal resources.

PREFACE

This Exploration Plan follows the format specified in 30 CFR Part 250.33 (*Federal Register*, Vol. 53, No. 63, pp. 10704-10705), issued 1 April 1988. The Exploration Plan consists of three volumes, the contents of which are summarized below:

VOLUME 1

This volume is the Exploration Plan *per se* without supporting appendices. It includes descriptions of:

- the type and sequence of exploration activities
- the drilling vessel
- the location of the well
- the geologic structure of the area
- onshore facilities
- the history of weather conditions
- the oceanography of the site, including waves, tides, and currents
- onsite flora and fauna
- potential impacts of routine operations both onshore and offshore

VOLUME 2

This volume provides the supporting appendices for the Exploration Plan with more detailed information concerning:

- the drilling vessel and safety procedures
- the hydrogen Sulfide Contingency Plan
- endangered and threatened species
- fisheries statistics
- the modeling of drilling mud and cutting discharges
- the consistency determination

Volume 2 also includes the:

Geologic Hazards Report

This section contains:

- a description of sea floor conditions
- information on geologic features, including faults and possible gas
- an assessment of geologic conditions at wellsite
- an assessment of geologic conditions surrounding anchoring positions
- maps of the sea floor

"Live-Bottom" Survey

This section contains the results of the photodocumentation of the sea floor in the area of the drillsite and drilling vessel anchors.

VOLUME 3

This volume is the Oil Spill Contingency Plan, with attachments.

This document contains:

- information concerning the risk of oil spills
- an analyses of the trajectory of oil spills
- general response strategies for spills at the drillsite, in open waters and on shore
- information on response equipment
- containing a detailed description of the equipment, facilities, and companies to be used in implementing the Oil Spill Contingency Plan.

[DoI Logo]

UNITED STATES DEPARTMENT
OF THE INTERIOR

MINERALS MANAGEMENT SERVICE
Atlantic OCS Region
381 Elden Street, Suite 1109
Herndon, Virginia 22070-4817

Sep. 21, 1990

Mr. William C. Whittemore
Senior Counsel
Mobil Exploration & Producing U.S. Inc.
1250 Poydras Building
New Orleans, Louisiana 70113-1802

Dear Mr. Whittemore:

The recently passed Oil Pollution Act of 1990 contains provisions that specifically prohibit the Minerals Management Service from approving any Exploration Plan, approving any Application for Permit to Drill, or permitting any drilling offshore the State of North Carolina until at least October 1, 1991.

Consequently, the Minerals Management Service directs the Suspension of Operations on the 21 leases included in the Manteo Unit offshore North Carolina in accordance with 30 CFR 250.10(b)(7). These 21 leases are as follows:

Lease	Block Number
OCS A-0225	246
OCS A-0226	247
OCS A-0227	290
OCS A-0228	291
OCS A-0229	334

Lease	Block Number
OCS A-0230	335
OCS A-0231	378
OCS A-0232	379
OCS A-0233	422
OCS A-0234	423
OCS A-0235	466
OCS A-0236	467
OCS A-0237	510
OCS A-0238	511
OCS A-0239	553
OCS A-0240	554
OCS A-0446	555
OCS A-0242	597
OCS A-0243	598
OCS A-0244	640
OCS A-0448	641

The Suspension of Operations is effective August 18, 1990, the day the Oil Pollution Act of 1990 was signed into law. The suspension will expire when the statutory prohibitions contained in the Outer Banks Protection Act are no longer in force.

The terms of all leases under suspension because of this legislation will be extended for a period of time equal to the period the suspension is in effect (30 CFR 250.10(f)). No payment of rental is required during the period of this directed suspension (30 CFR 218.154(a)).

By copy of this letter, we are informing the other seven participants in the Manteo Unit of our decision.

Sincerely,

/s/ Lawrence H. Ake
LAWRENCE H. AKE
Acting Regional Supervisor,
Field Operations

cc: Amerada
Chevron
Conoco
Marathon
Oxy
Shell
Union
MMS Royalty Management
(Unit Agreement No. 752-290001-0)
(RMP Attn: FAD/RDB Paula Bearfoot)

[DoI Logo]

UNITED STATES DEPARTMENT
OF THE INTERIOR

MINERALS MANAGEMENT SERVICE
Atlantic OCS Region
381 Elden Street, Suite 1109
Herndon, Virginia 22070-4817

Sep. 21, 1990

Amerada Hess Corporation
1201 Louisiana, Suite 700
Houston, Texas 77002-5681

Gentlemen:

According to our records, you obtained interest in one or more leases on the Atlantic OCS offshore the State of North Carolina during Atlantic Lease Sales 56, RS-2, or 78 (see enclosed list). The recently passed Oil Pollution Act of 1990 contains provisions that specifically prohibit the Minerals Management Service from approving any Exploration Plan, approving any Application for Permit to Drill, or permitting any drilling offshore the State of North Carolina.

As authorized by the regulations codified at 30 CFR 250.10(b)(7), the Minerals Management Service hereby directs a Suspension of Operations (SOO) for those leases indicated on the enclosed list. The SOO is granted effective August 18, 1990, the day the Oil Pollution Act was signed into law. The SOO will expire when the statutory prohibitions contained in the Outer Banks Protection Act are no longer in force.

The terms of all leases under suspension because of this legislation will be extended for a period of time equal to the period the suspension is in effect (30 CFR 250.10(f)).

No payment of rental is required during the period of this directed suspension (30 CFR 218.154(a)).

Sincerely,

/s/ Lawrence H. Ake
LAWRENCE H. AKE
Acting Regional Supervisor,
Field Operations

Enclosure

cc: MMS Royalty Management (RMP Attn: FAD/RDB
Paula Bearfoot)

bcc: FO File
AOCS Chron
L. Ake

LMS:AOCS:Mail Stop 6000:LAke:la:09/20/90

IDENTICAL LETTER SENT TO AMOCO, CHEVRON, CONOCO, MARATHON OIL, MOBIL OIL, MURPHY OIL, ODECO, OXY USA, SHELL, AND UNOCAL.

Enclosure

AMERADA HESS CORPORATION

LEASE #	PERCENT
0220	33.33300
0234	33.33300
0236	33.33300
0238	33.33300
0240	33.33300

Enclosure

AMOCO PRODUCTION COMPANY

LEASE #	PERCENT
0258	33.33333
0263	33.33333
0266	33.33333
0267	33.33333
0268	33.33333
0269	33.33333
0445	100.00000
0447	100.00000
0450	100.00000

Enclosure

CHEVRON U.S.A. INC.

LEASE #	PERCENT
0221	33.33334
0226	33.33334
0228	33.33334
0231	50.00000
0232	33.33334
0233	50.00000
0235	66.66667
0237	50.00000
0239	33.33334
0242	33.33334
0249	100.00000
0250	100.00000
0258	66.66667
0263	66.66667
0266	66.66667
0267	66.66667
0268	66.66667
0269	66.66667
0376	100.00000
0446	50.00000
0448	100.00000

Enclosure

CONOCO INC.

LEASE #	PERCENT
0221	33.33333
0222	25.00000
0223	50.00000
0224	50.00000
0225	100.00000
0226	33.33333
0227	100.00000
0228	33.33333
0229	50.00000
0230	50.00000
0231	50.00000
0232	33.33333
0233	25.00000
0237	25.00000
0239	33.33333
0242	33.33333
0243	25.00000
0244	100.00000
0254	50.00000

Enclosure

MARATHON OIL COMPANY

LEASE #	PERCENT
0220	33.33300
0234	33.33300
0236	33.33300
0238	33.33300
0240	33.33300

Enclosure

MOBIL OIL EXPLORATION &
PRODUCTION SOUTHEAST

LEASE #	PERCENT
0220	33.33400
0234	33.33400
0236	33.33400
0238	33.33400
0240	33.33400

Enclosure

MURPHY OIL USA, INC.

LEASE #	PERCENT
0247	50.00000
0248	50.00000
0261	50.00000
0264	50.00000
0265	50.00000
0449	50.00000

Enclosure

ODECO OIL & GAS COMPANY

LEASE #	PERCENT
0247	50.00000
0248	50.00000
0261	50.00000
0264	50.00000
0265	50.00000
0449	50.00000

Enclosure

OXY USA INC.

LEASE #	PERCENT
0222	12.50000
0233	12.50000
0237	12.50000
0243	12.50000

Enclosure

SHELL OFFSHORE INC.

LEASE #	PERCENT
0222	12.50000
0233	12.50000
0237	12.50000
0243	12.50000
0372	100.00000
0440	100.00000
0441	100.00000
0442	100.00000
0443	100.00000
0444	100.00000

Enclosure

UNOCAL EXPLORATION CORPORATION

LEASE #	PERCENT
0221	33.33333
0222	50.00000
0223	50.00000
0224	50.00000
0226	33.33333
0228	33.33333
0229	50.00000
0230	50.00000
0232	33.33333
0235	33.33333
0239	33.33333
0242	33.33333
0243	50.00000
0251	100.00000
0254	50.00000
0255	100.00000
0446	50.00000

Atlantic Outer Continental Shelf

ENVIRONMENTAL ASSESSMENT OF EXPLORATION PLAN FOR MANTEO AREA BLOCK 467

Operator: Mobil Oil Exploration & Producing Southeast Inc.

Plan Type: Exploration

Lease: OCS-A 0236

Block: NI 18-2-467

U.S. Department of the Interior
Minerals Management Service
Atlantic OCS Region
Environmental Assessment Section
381 Elden Street, Suite 1109
Herndon, VA 22070-4817

September 28, 1990

* * * *

VII. *Finding of No Significant Impact (FONSI)*

In the preceding pages of this EA the MMS has examined the impacts of the proposed action, the drilling of one exploratory well on NI 18-2 Block 467. The following is a summary showing the evaluation of these impacts and lists specific references to the EA which support each determination of "no impact" or "no significant impact".

CEO Parameter 40 CFR 1508.27(b)	Severity of Impact Level/Degree of Significance	EA Page and Paragraph Ref.
1. Beneficial and/or adverse effects.	NS •	pp. 49-75 pp. 83-84
2. Public health and safety.	NS	pp. 11 & 12 para. 1-4 pp. 49-51
3. Unique characteristics of the geographic area.	NI •	
4. Effects highly controversial.	NS	p. 85
5. Highly uncertain effects or unique or unknown risks.	NS	Appendices E & F
6. Establishes precedent for future actions or is a decision in principle about a future action.	NI	
7. Assessment of cumulative actions and impacts thereof. Note 400 CFR 17.	NS	pp. 49-75
8. Effects on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historical Places or may cause loss or destruction of significant scientific, cultural, or historical resources.	NI	p. 65 para. 6 p. 66 p. 67 para. 1 p. 71 para. 3 & 4

9. Effects on endangered or threatened species or their habitat that have been determined to be critical under the Endangered Species Act of 1973.	NS	p. 57 para. 5-p. 63 para. 2
10. Threatens a violation of Federal, State, or local laws or requirements imposed for the protection of the environment.	NI	

[a] No significant impact
[b] No impact

VIII. *Environmental Assessment Determination*

In my opinion, approval of Mobil Oil Exploration & Producing Southeast, Inc.'s proposed action involving the drilling of one exploratory well on NI 18-2, Block 467, described in this Environmental Assessment, does not constitute a major Federal action significantly affecting the quality of the human environment as defined by the National Environmental Policy Act (NEPA), Section 102 (2)(c) and 40 CFR 1500 to 1508. In rendering this opinion, I have given special consideration to 30 CFR 250.34-4 (compliance with NEPA).

/s/ [Illegible] — 9/28/90
Regional Supervisor, — Date
Leasing and Environment
Atlantic OCS Region

I concur and determine that an Environmental Impact Statement will not be prepared for this action.

/s/ Bruce G. Weetman — 9/28/90
Regional Director, — Date
Atlantic OCS Region

[State Logo]

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES
Division of Coastal Management
225 North McDowell Street
Raleigh, North Carolina 27602

November 19, 1990

James G. Martin, Governor — Roger N. Scheeter
William W. Cobey, Jr., Secretary — Director

Mr. Bruce G. Weetman, Regional Director
USDI Minerals Management Service
Atlantic OCS Region
381 Elden Street, Suite 1109
Herndon, VA 22020

Dear Mr. Weetman:

This letter provides the State of North Carolina's official response to Mobil Oil Exploration & Producing Southeast Inc.'s August 10, 1990 consistency determination contained in Appendix Q of the Final Exploration Plan—Manteo Area Block 467—Offshore Atlantic (EP). The determination contained a certification that the "activities described in detail in the Plan comply with the approved North Carolina Coastal Management Program and will be conducted in a manner consistent with such a Program." The North Carolina Division of Coastal Management received the determination and Exploration Plan on September 5, 1990 under your cover letter dated August 30, 1990 to Governor James G. Martin. We assigned the determination the number CD90-23 for review coordination purposes.

Based upon our review, we object to Mobil Oil Exploration & Producing Southeast Inc.'s certification that the proposed activities described in its final EP will be conducted in a manner consistent with the North Carolina Coastal Management Program (NCCMP). Pursuant to 15 CFR Sections 930.56(b), 930.58, 930.75(b), 930.77(b), and 930.79(c) our objection is based on Mobil's failure to meet and/or provide adequate information to address the following criteria set forth in the approved North Carolina Coastal Management Program.

- Risks of environmental harm to fish spawning areas are assessed and minimized.
- Potential damage or interference with traditional fishing grounds or areas with high biological/recreational value (reefs, rock outcrops) is avoided.
- Placement of structure in geologically hazardous or biologically sensitive areas is avoided.
- Potential wildlife destruction or relocation is assessed and minimized.

The Division of Marine Fisheries (See Attachment CD90-23-1) and Outer Continental Shelf Office (See Attachment CD90-23-2) have identified deficiencies related to the above criteria in Mobil's Exploration Plan. These include, but are not limited to, the deficiencies summarized below:

1) Though state reviewers have stressed the need for site-specific data in order to determine whether or not proposed activities comply with these criteria, Mobil has failed to provide it. Regarding fisheries resources, the EP states on page 212-45 that "The following description relies mostly on general rather than site-specific information".

2) While the document provides a more thorough review of the literature than previous documents, the EP does not adequately recognize or address the significant and diverse biological, recreational, and commercial resources characteristics of the proposed drillsite. These include oceanic fish and gamefish, marine mammals, and seabirds.

3) Larval fish data provided were collected from north and south of the site and may not relevant to environmental conditions and ecology at the proposed drillsite.

4) Larval fish data provided are not relevant to the proposed summer drilling season.

5) The Exploration Plan does not adequately recognize or address the significant benthic biological community even though the community in the general area has been documented as the most abundant on the Atlantic Continental Slope and Rise.

6) The EP fails to recognize or provide information on the relationship of "The Point" and potentially significant impacts to the coastal zone regarding commercial and recreational fishing fleets utilizing the area and subsequent socio-economic and tourism effects.

- Risks of spills from OCS operations and possible trajectories are evaluated and appropriate mitigation measures employed.

The Division of Environmental Management (See Attachment CD90-23-3) and Outer Continental Shelf Office (Attachment CD90-23-2) have identified deficiencies related to the above criteria in Mobil's oil spill contingency plan component of the EP. These include, but are not limited to, the deficiencies summarized below:

1) The model-generated trajectory relies too heavily on circulation models which have insufficient validation and calibration by field ~~data~~ at the site. Data north and west of the drillsite on shelf circulation and water mass transport toward shore, which are essential to proper oil spill risk analysis, are lacking. An independent panel recently recommended that two years of field observations be collected to fill these data gaps.

2) The assurance of the availability of cleanup equipment and supplies is not documented.

3) The EP relies on equipment not capable of performing under expected physical conditions (Expandi 4300 Oil Boom) even where more suitable equipment (Expandi Ocean Boom 7000) is available from the same manufacturer.

4) There is a need to consider deploying some additional specialized equipment such as an offshore fire boom on the dedicated on-site vessel.

5) Response times specified in the EP are too long to contain a spill of significant magnitude especially under adverse weather conditions. There is a need to reevaluate the type of equipment and the deployment strategy to insure an appropriate response time.

6) The use of chemical dispersants continues to be controversial. Though the EP relies heavily on the use of dispersants, Mobil has failed to seek or obtain the required pre-approval from the NC Enivronmental Management Commission for their use in state waters.

7) The EP fails to consider less toxic dispersants than Corexit 9527 such as Corexit 9580.

8) There is a need to consider other chemical strategies in addition to dispersion which should be used as

a last resort. These include at a minimum herding agents, gels, biodegradation agents, and emulsion preventers and breakers.

9) The EP states that special additives may be used such as biocides, diesel or other oils for lubrication, polyacrylamide, etc. Toxicity of these additives is a very strong concern of the state and the plan fails to adequately assess effects at the site. Toxicity data in the EP are developed from shallow water species not related to the drillsite.

10) The EP needs to address the new OSHA 1910.120 regulations requiring special training for all spill responders.

11) The EP fails to adequately address disposal of collected oil. The EP simply indicates that no plans are presently available.

12) The EP fails to address emergency permitting requirements for clean up activities.

In addition to failing to meet these criteria listed above, the Exploration Plan lacks sufficient information to determine compliance with OCS and Water and Air policies listed in the approved NCCMP (See Attachment CD90-23-3).

On July 17, 1990, the State objected to Mobil Oil Exploration & Producing Southeast Inc.'s NPDES consistency certification for the discharge activities associated with the proposed exploration well currently the subject of the Manteo Area Block 467—Offshore Atlantic Exploration Plan (See Attachment CD90-23-4). This objection was primarily based upon the failure by Mobil to provide site-specific fisheries information or other information necessary to resolve the "area of biological concern" (ABC) issue. As the fisheries information requested

has still not been provided, the proposed discharge activities remain inconsistent with the North Carolina Coastal Management Program.

The NC Division of Environmental Management (DEM) provided detailed comments on May 15, 1990 on the Draft NPDES permit issued by the Environmental Protection Agency (EPA). Since the draft permit has not changed to date, the previous comments continue to be recommended by DEM and are included in Attachment CD90-23-5.

On September 21, 1990, Governor Martin submitted comments to Minerals Management Service pursuant to the Outer Continental Shelf Lands Act (See Attachment CD90-23-6). While the Governor's OCSLA comments do not represent North Carolina's official consistency position, they underscore specific information inadequacies and unresolved issues described above such as oil spill contingency and areas of biological concern.

North Carolina has expressed concerns to Mobil about informational deficiencies related to the proposed drilling activities in Manteo Area block 467, Lease OCS A-0326 since the fall of 1988. Guidance on information needs and deficiencies has been provided in our past correspondence and in reviews of draft documents related to this activity. Several of our concerns have been addressed in the final EP. The Division of Land Resources, for example, has determined that their initial concerns about geologic hazards have been adequately addressed in the final EP. Moreover, to the extent that these deficiencies and information needs have not been addressed adequately by the EP, this letter constitutes a continuing statement of information needs and a request for such information pursuant to 15 CFR 930.58 and 15 CFR 930.56.

A number of alternatives have ben suggested by our reviewers as required by 15 CFR 930.79(c) and 930.64 (b)(2) (See Attachment CD90-23-2). However, we feel that the only alternative presently available to Mobil, where our objection is based upon a failure to provide necessary data and information, is to provide the information needs identified necessary to adequately assess consistency with the NCCMP. Should Mobil provide this required information, including relevant information needs identified by the Outer Banks Protection Act Review Panel, the State will then be in a position to review the proposed activity to determine whether it may be conducted in a manner consistent with North Carolina's Coastal Management Program.

This letter serves as our formal notice that we have found the proposed activity inconsistent with the North Carolina Coastal Management Program. A copy will be sent to Mobil Exploration & Producing Southeast, Inc. to serve as notice to Mobil, pursuant to 930.74(c), that our finding may be appealed to the Secretary, U.S. Department of Commerce, Washington, DC. The appeal must be filed within 30 days of receipt of this letter and must specifically address the applicant's belief that (1) the activity is consistent with the objectives or purposes of the Federal Coastal Zone Management Act, and/or (2) the activity is necessary in the interest of national security.

Should you have questions regarding our finding or the appeal procedure, please contact me at (919) 733-2293.

Sincerely,

/s/ Roger N. Schecter
ROGER N. SCHECTER

Attachments

cc: Governor James G. Martin
Secretary William W. Cobey, Jr.
Secretary James S. Lofton

Mr. James C. Martin, Manager
Environmental, Regulatory, and Loss Prevention
Mobil Exploration & Producing U.S. Inc.
PO Box 650232
Dallas, TX 75265-0232

NC Outer Continental Shelf Office
NC Department of Justice
NC Division of Coastal Management, Morehead City Office
NC Division of Coastal Management, Elizabeth City Office
NC Division of Environmental Management
NC Division of Marine Fisheries
NC Wildlife Resources Commission
NC Division of Land Resources
NC Division of Parks and Recreation

Mr. Timothy R.E. Keeney
U.S. Department of Commerce, OCRM
Washington, DC 20235

REPORT

to

THE SECRETARY OF THE INTERIOR

from the

NORTH CAROLINA

ENVIRONMENTAL SCIENCES

REVIEW PANEL

as

MANDATED BY THE OIL

POLLUTION ACT OF 1990

January 22, 1992

EXECUTIVE SUMMARY

INTRODUCTION

Background

The Oil Pollution Act of 1990, in a section cited as the Outer Banks Protection Act, prohibits the Secretary of the Interior from proceeding with a number of actions relative to development of oil and gas resources offshore North Carolina for which he is responsible under the Outer Continental Shelf Lands Act (OCSLA). Actions prohibited include: (1) conducting a lease sale; (2) issuing any new lease; (3) approving any exploration plan; (4) approving any development and production plan; (5) approving any application for permit to drill; and (6) permitting any drilling. The prohibition on these actions is mandated to remain in effect until the later of: (1) October 1, 1991 or (2) 45 days of continuous session of the Congress following the submission of a written report from the Secretary certifying that the information available to him is sufficient to carry out his responsibilities under the OCSLA.

In his report, the Secretary is required to take into consideration findings and recommendations of a panel established by the Outer Banks Protection Act, the North Carolina Environmental Sciences Review Panel, and to include a detailed explanation of any differences between his certification of sufficient information and the findings and recommendations of this group. The Panel is charged by the Act with: (1) assessing the adequacy of the available physical oceanographic, ecological, and socioeconomic information to enable the Secretary to fulfill his responsibilities under OCSLA and (2) identifying any additional information deemed essential to enable the Secretary to carry out these responsibilities. The Panel's response to this charge is the subject of this document.

Organization of the Review Process

As provided by the Outer Banks Protection Act, the North Carolina Environmental Sciences Review Panel is composed of five members, a marine scientist selected by the Secretary of the Interior, a marine scientist selected by the Governor of North Carolina, and three scientists, one each from the disciplines of physical oceanography, ecology, and social sciences, selected jointly by the Secretary and the Governor from a list developed by the National Academy of Sciences.

The first meeting of the Panel was on January 28, 1991. This and subsequent Panel meetings were devoted to discussing and reaching agreement on the functioning of the group, an appropriate definition for adequacy of information, the scope and structure of the required report, conclusions regarding adequacy of information, and recommendations for implementing additional studies. To develop the report, individual Panel members carried out extensive reviews of available information, developed draft sections, and contributed to detailed discussions regarding revisions. All conclusions presented in the report were thoroughly considered at one or more Panel meetings. Unless specifically indicated in the text, the conclusions and recommendations presented in the report represent the unanimous decision of the Panel members. All meetings were announced in the Federal Register and were open to the public.

Geographic Area Considered

The Panel is directed to consider the adequacy of information for making decisions regarding oil and gas leasing, exploration, and development on the lands of the Outer Continental Shelf (OCS) offshore of North Carolina. There are presently 53 lease blocks in this

area for which there are active leases for oil and gas resource identification and development. These leases were sold in 1981, 1982, and 1983 by the Department of the Interior's Minerals Management Service (MMS) and the Bureau of Land Management (BLM), MMS's predecessor organization.

Additional lease blocks are currently under consideration for leasing as part of a proposed 5-year (1992-1997) program of lease sales (U.S. DOI, 1991b). There is also one request presently pending which seeks approval of a plan for drilling one exploratory well in Manteo Area Block 467 (the Manteo site). This site is being proposed for drilling to test for oil and gas resources, not only in Block 467, but also in a wider, unitized Exploration Unit which includes this block and 20 other contiguous leased blocks (the Manteo Unit). Given the strong interest and public concern regarding this proposed exploratory well, the Panel especially focused on assessing the adequacy of information in the documents (U.S. DOI, 1990a; 1990b) which were developed by MMS specifically to support decision-making regarding oil and gas resource development for this site. However, the Panel's report also includes a separate, broader and more general, consideration of the adequacy of information for the other parts of the OCS offshore of North Carolina, especially areas south of Cape Hatteras.

Adequacy of Existing and Need for Additional Information

A recent National Research Council (NRC, 1989) report evaluates the adequacy of the existing environmental information to support decision-making regarding development of oil and gas resources on the OCS of Florida and California. The NRC report uses a definition which

judges adequacy on the basis of the completeness and scientific rigor of the available information. The Panel concluded that it was appropriate to adopt a consistent definition that judges adequacy using the same two elements.

The Panel notes and endorses recent changes in the focus of the Environmental Studies Program of MMS, which were catalyzed in part by a NRC review conducted some time ago (NRC, 1978). However, the Panel also concurs with a more recent NRC evaluation (NRC, 1989) which emphasizes the continuing need for a still greater commitment to the support of process-oriented studies by this program to assess potential impacts of OCS activities.

CONCLUSIONS

Area of Manteo Block 467

General information relating to the physical oceanography and ecology in the vicinity of Manteo Block 467 has been presented in the DOI decision documents for oil and/or gas resource development at this site. However this information is not sufficiently quantitative or process-oriented to provide an adequate understanding of potential impacts related to such development. Socioeconomic information for all phases of development activity ranges from inadequate to non-existent.

Although adequate in many respects for providing needed physical oceanography information, the present OSRA model is deficient in several aspects, including the failure to account for effects of short-term fluctuations in Gulf Stream dynamics. Simple estimates of errors associated with known current variability can make OSRA adequate for decision-making for exploration, however. Information is inadequate relating to flow over the shelf

north of Cape Hatteras, how oil from a spill at the Manteo Site may tend to concentrate along the Gulf Stream front, and how oil would disperse from the site of a potential pipeline rupture or tanker accident away from the drill site. With regard to the behavior of oil within the surf zone, the inlets, or the estuarine systems enclosed within the barrier islands, information is not as good as desirable, but it is adequate to assume that oil which approaches the coast will either beach or enter an estuary. Adequate information is presented on the fates and effects of drilling muds and cuttings as well as the secondary release of small amounts of contaminants from platforms or vessels.

A number of inadequacies of ecological information were identified in the DOI decision documents relating to all phases of exploitation of oil and gas resources. These result from incomplete ecological information and flawed interpretations rather than from failure to incorporate available information within the documents. Major inadequacies include absence of understanding of: (1) how physical/biological couplings drive intense utilization by top carnivores near the Manteo site, especially in the highly productive area identified as "the Point"; (2) the role of the Gulf Stream *Sargassum* community as vital habitat, not only for the reproduction and young of a number of recreationally and commercially important fishes, but also for juveniles of the five species of turtles identified in the Endangered Species Act; (3) the potential impacts of development on the benthic community adjacent to the Manteo Site; (4) impacts of an oil spill on the overwintering striped bass populations along the shallow waters off the Outer Banks; and (5) the mechanisms of transport, deposition, and impact of spills on the large offshore shoals found at the North Carolina capes.

Within the socioeconomic presentations in the DOI decision documents, there is little or no attempt to establish connections among social scientific variables or between these and physical and natural scientific properties or to analyze such relationships. For example, the effect of OCS-related activities on specific fish stocks, specific recreational or commercial fishermen who exploit such fish stocks, and the communities and industries that are dependent upon such activity are not fully characterized or analyzed. The potential impact of changing perceptions and attitudes concerning the marine and coastal environment on behavior patterns are another example of such relationships that are not fully characterized or analyzed. The general assumption contained within the DOI decision documents is one of "no significant impact", a conclusion which may be warranted for certain aspects of the exploration/delineation phase, but is not justified beyond this for the development/production phase nor, for that matter, for the exploration/delineation phase as a whole. All OCS activity, especially during development and production such as has occurred in Alaska, Louisiana, and California, has a significant impact on the human environment including socioeconomic systems (Petterson *et al.*, 1983; Wolf, 1991; Yarle, 1983). Whether or not we judge this impact to be, on balance, positive or negative is not the point here: the point is that there are significant impacts which must be adequately characterized and analyzed. Virtually all of the analyses relating to the costs and benefits of the proposed OCS activities do not warrant the conclusions presented in the DOI documents.

North Carolina OCS

Within the broad area of the North Carolina OCS, information on the physical oceanographic, ecological,

and socioeconomic aspects is generally less adequate than that available for the Manteo site, largely because these areas are less well studied and the DOI decision documents were not developed with these areas as the primary focus. Physical oceanographic information was deemed inadequate relative to accidents and the possible distribution of oil spills.

Although much of the ecological information available regarding development at Manteo Block 467 is applicable to leasing in the North Carolina OCS area, inadequacies identified for that site are equally relevant to the North Carolina OCS. Additionally the available information is deemed inadequate to support leasing on the North Carolina OCS with regard to: (1) the role of ocean physics in determining the reproductive success of fish and shellfish in this region, (2) inventories of the seabirds present and the mechanisms controlling their abundances; (3) the distributions of cetaceans and turtles, especially the threatened and endangered ones; and (4) particularly for the area south of Cape Hatteras, information concerning primary and secondary production. Additionally, site-specific issues, including questions concerning appropriate monitoring studies, can be expected to arise, but these cannot be identified in advance of completion and analysis of recommended studies associated with the leasing phase and of further information on specific sites.

Conclusions relating to the adequacy of socioeconomic information within the Manteo site decision documents also apply to the entire North Carolina OCS. However, there are considerably less data and information available that pertain to this broader region and thus, an even greater need exists for developing comparable data and information.

RECOMMENDED STUDIES

Area of Manteo Block 467

Specific studies are identified within the physical oceanographic, ecological, and socioeconomic areas for each of the four phases of operation.

Recommended studies in physical oceanography include the following:

(1) Development of improvements in OSRA specifically designed to provide better current field estimation and to better account for the effects of Gulf Stream meanders and cold dome eddies. Such improvements are currently under development.

(2) Development of OSRA submodels focusing on the nearshore regions of barrier islands, inlets, and estuarine regions inshore of the Outer Banks. Such an improvement is desirable, but not likely to be available in the near future.

(3) Major field efforts to characterize the current fields of the northern North Carolina shelf and of the region south of Cape Hatteras between the shelf and the Gulf Stream. The former study is underway and the second is only required if oil and gas developmental activities are to take place south of the Manteo block.

Also, in the event that it is demonstrated that the Gulf Stream frontal regions are critical habitats. It will be desirable to conduct studies of frontal convergence. These studies are needed only for development at the Manteo site as the presently available information is adequate for decision-making regarding exploration at this site. For the exploration phase at the Manteo site, the field studies called for in Item #3 above will not be required if OSRA

can be shown to include realistic time-varying subsurface currents.

Recommended studies in the area of ecology include the following:

(1) Development of an understanding of the oceanographic and ecological processes acting on the North Carolina continental shelf and slope, largely to explain the functional basis for the distinctively intense use in the area of "the Point" by higher [illegible] level consumers. These studies should be initiated immediately and completed before delineation, but the initial exploration need not be delayed.

(2) An investigation on the dynamics of the *Sargassum* community focusing on the degree to which it represents a major habitat for sea turtles and in the recruitment of commercially and recreationally important pelagic fishes. This study should begin immediately and be completed before delineation.

(3) A survey of the benthic community in the area of the Manteo site to determine the geographic extent of the unusual aggregation of organisms in this region and, depending upon the extent, further studies to determine the recovery rate of these organism if covered by drilling discharges. The survey portion should be undertaken immediately and should be completed before exploration begins.

(4) Monitoring studies to determine possible increases in hydrocarbon levels within several indicator organisms, including *Sargassum*, one or two associated animals, and the Wilson's storm petrels.

The following studies dealing with the socioeconomics area should each require about one year and all should be completed before further permits are issued:

(1) Base case characterization analyses for the Manteo area. These should include not only standard aggregate data base analyses, but also characterization of the structure of relevant industries and the relationships among the private and public sector entities potentially affected by development of oil and gas resources in this area.

(2) Community studies involving the communities most likely to be affected by development at the Manteo site. These studies should cover the sociocultural variables necessary for developing a contextual understanding of the role and effect of potential OCS activities in these communities.

(3) Pre-OCS activity perceptions of environmental conditions and values associated with potential oil and gas development at the Manteo site.

(4) Infrastructural impacts of development at the Manteo site including consideration of the impacts on all potentially affected areas related to revenue sources, distribution of financial burdens, and certain sociopolitical variables.

(5) Design of a comprehensive, longitudinal socioeconomic monitoring program which should be implemented prior to the issuance of drilling permits.

These recommended studies are focused primarily on the needs for socioeconomic information to support the leasing and exploration phases. For the development/production phase, similar studies will be needed, but ones that are significantly increased in the breadth and depth of the geographical areas and magnitude of impacts considered.

Socioeconomic studies are also recommended specifically for the post-production phase; these should be de-

signed to consider questions about the maintenance of the infrastructure developed because of OCS production, the displacement effects for employees of related industries, and the restoration of replacement of pre-developmental activities and human environments.

North Carolina OCS

In light of the fact that there is much less information available for Panel review pertaining to the potential [illegible] development on the North Carolina OCS than for the specific area of the Manteo site, expanded versions of most of the studies recommended for that site would be required to provide adequate information on physical oceanography, ecology, and socioeconomics over the North Carolina OCS.

The additional physical oceanographic studies should include the following:

(1) Detailed assessments using OSRA calculations and an evaluation of their potential errors for all sites under consideration for leasing (required for leasing phase);

(2) Current meter measurements at potential drilling sites and at locations away from these sites that will provide improved information with which to estimate the fate of spills both at the sites and from service vessels along their paths to the sites (required for exploration phase); and

(3) Expanded shelf circulation studies of the region through which gas and/or oil will be transported from producing wells (required for development phase). (This item may be unnecessary if OSRA is proven to incorporate realistic time-varying subsurface currents.)

Additional studies involving ecology should include the following:

(1) The development of a better understanding of the relation between cross-shelf water movements and the reproductive success of estuarine-dependent fishes and shellfish that use the shelf for reproduction;

(2) A survey of the seasonal patterns in distribution and abundance of seabirds in relation to circulation patterns; and

(3) An expansion of the ongoing South Atlantic assessment of the occurrence of marine mammals and sea turtles to include all of the area offshore North Carolina.

Other ecological studies will likely be required, but these can only be defined after specific sites for drilling have been proposed.

The recommended socioeconomic studies all involve expansion of the studies that have already been recommended for the Manteo site. These expanded studies will need to be tailored to the specific sites and socioeconomic systems involved with the OCS activities under consideration.

It is also recommended that MMS obtain and use a Geographic Information System for the area of the North Carolina OCS to facilitate the identification, assemblage, review, and analysis of the considerable body of scattered information and data available for this area.

A summary of the studies recommended by the Panel to initiate decision-making at each of the four phases is presented for the Manteo Site and for the North Carolina OCS in Table 1.

[Copy Illegible]

PHASE	MANTEO SITE	NORTH CAROLINA OCS
Leasing	(As leasing has already been carried out for the area of the Manteo site. It is not pertinent to recommend studies to support this phase in this area.)	Physical Oceanography OSRA (p. 33)
	Physical Oceanography No Studies Required (p. 30)	Ecology *Sargassum* Community Dynamics (p. 55) Use of NC Shelf for Fish Reproduuction (p. 55) Seabird Survey (p. 56) Cetacean and Turtle Assessment (p. 56)
	Ecology No Studies Required (p. 46)	Socioeconomics Base Case Characterization (p. 66, a) Community Studies (p. 66, a) Aesthetic & Perceptual Issues (p. 66, a) Infrastructural Issues (p. 66, a) Socioeconomic Monitoring (p. 66, a & d)
	Socioeconomics No Studies Required (p. 60)	
Exploration/Delineation		
	Physical Oceanography (f) No Studies Required (p. 30)	Physical Oceanography OSRA Error Assessments (p. 33)
	Ecology Benthic Community Survey & Recovery (p. 48, c) Ecosystem Dynamics at the "Point" (p. 47, c) *Sargassum* Community Dynamics (p. 47, c)	Ecology No Studies Identified (p. 60)

PHASE	MANTEO SITE	NORTH CAROLINA OCS
	Socioeconomics Base Case Characterization (p. 63, b) Community Studies (p. 64, b) Aesthetic & Perceptual Issues (p. 64, b) Infrastructural Issues (p. 64, b) Socioeconomic Monitoring (p. 64, b & d)	Socioeconomics Base Case Characterization (p. 66, b) Community Studies (p. 66, b) Aesthetic & Perceptual Issues (p. 66, b) Infrastructural Issues (p. 66, b) Socioeconomic Monitoring (p. 66, b & d)
Development/Production		
	Physical Oceanography Shelf Circulation (p. 31)	Physical Oceanography Shelf Circulation/ Moorings (p. 34)
	Ecology Monitoring of *Sargassum* Community Contamination (p. 49, d) Oil on Cape Shoals (p. 49) Aggregations of Striped Bass (p. 49)	Ecology No Studies Identified (p. 57)
	Socioeconomics Base Characterization (p. 64, a) Community Studies (p. 64, a) Aesthetic & Perceptual Issues (p. 64, a) Infrastructural Issues (p. 64, a) Socioeconomic Monitoring (p. 64, a & d)	Socioeconomics Base Characterization (p. 66, a) Community Studies (p. 66, a) Aesthetic & Perceptual Issues (p. 66, a) Infrastructural Issues (p. 66, a) Socioeconomic Monitoring (p. 66, a & d)
Post-production (e)		
	Physical Oceanography No Studies Identified	Physical Oceanography No Studies Identified
	Ecology Sea Turtle Attraction Study (p. 50)	Ecology Sea Turtle Attraction Study (p. 57)

Socioeconomics Post-production study (p. 65)	Socioeconomics Post-production study (p. 66)
All Phases	General Geographic Information System (p. 66)

(a) Regional in scope
(b) Site-specific in scope
(c) Studies should be initiated immediately and should be completed before delineation is approved
(d) Monitoring design completed before identified phase but activity continued through post-production phase.
(e) Required before approval of production phase
(f) Although no specific new studies are recommended, further decision documents (p. 30).
analyses and interpretation of OSRA results are needed in the

[DOI Logo]

UNITED STATES DEPARTMENT
OF THE INTERIOR

MINERALS MANAGEMENT SERVICE
Atlantic OCS Region
381 Eden Street, Suite 1109
Herndon, Virginia 22070-4817

[Date Illegible]

Ms. Leslie J. Burton
Senior Counsel
Mobil Exploration & Producing U.S. Inc.
1250 Poydras Building
New Orleans, Louisiana 70113-1892

Dear Ms. Burton:

The Oil Pollution Act of 1990 contained provisions that prohibited the Minerals Management Service (MMS) from approving any application for permit to drill, approving any exploration plan, or permitting any drilling on lands offshore the State of North Carolina. Consequently, this office sent a letter to Mobil on September 21, 1990, directing a Suspension of Operations (SOO) on the 21 leases of the Manteo Unit.

The prohibitions in the Act were scheduled to expire on the later of the following:

a) October 1, 1991; or

b) 45 days of continuous session of Congress after submission of a written report to the Congress by the Secretary of the Interior, . . .

Secretary Lujan delivered the required report to the Congress on April 2, 1992. In the report, the Secretary certified that sufficient information currently exists for him to

exercise his responsibilities under the Outer Continental Shelf Lands Act and the National Environmental Protection Act regarding review and approval of exploration activities proposed offshore the State of North Carolina (the Manteo weil). The Secretary did not certify that these conditions exist for leases outside of the Manteo Unit. On June 7, 1992, the required 45 days of continuous session of Congress elapsed.

The circumstances that justified the granting of a SOO on the 21 leases of the Manteo Unit no longer exist. Therefore, effective June 8, 1992, the suspension of these 21 leases offshore the State of North Carolina is no longer in effect. Rental payments for your leases will be calculated from that date, unless another SOO is requested by the Unit Operator and approved by the MMS.

The terms of the leases covered by the previous suspension(s) will be extended for a period of time equal to the period the suspension(s) was (were) in effect (30 CFR 250.10 (f)). The 21 leases and the new expiration dates are as follows:

Lease	Date	Lease	Date
00225	6/7/94	00236	6/7/94
00226	6/7/94	00237	6/7/94
00227	6/7/94	00238	6/7/94
00228	6/7/94	00239	6/7/94
00229	6/7/94	00240	6/7/94
00230	6/7/94	00242	6/7/94
00231	6/7/94	00243	6/7/94
00232	6/7/94	00244	6/7/94
00233	6/7/94	00446	6/22/95
00234	6/7/94	00448	6/22/95
00235	6/7/94		

By copy of this letter, we are informing the other seven participants in the Manteo Unit of our decision.

Sincerely,

/s/ Bruce G. Weetman
BRUCE G. WEETMAN
Regional Director

cc: Amerada Hess Corporation
Chevron U.S.A. Inc.
Conoco Inc.
Marathon Oil Company
OXY USA Inc.
Shell Offshore Inc.
Union Oil Company of California
MMS Royalty Management
(Unit Agreement No. 752-290001-0)
(RMP Attn: Charles Ross, MS 3240)

MOBIL EXPLORATION & PRODUCING U.S. INC.

September 15, 1992

Mr. Bruce Weetman
Regional Director
Minerals Management Services
Atlantic OCS Region
381 Elden Street, Suite 1109
Herndon, Virginia 22070-4817

Dear Bruce:

I am in receipt of your letter dated September 2, 1992 about the suspension of operations serving the 21 leases of the Manteo Unit.

Mobil Exploration & Producing U.S. Inc., as agent for Mobil Oil Exploration & Producing Southeast Inc. (Mobil) and operator of the Manteo Unit, hereby requests that a Suspension of Operations (SOO) be in full force and effect from June 8, 1992 forward pursuant to § 250.10(6) Title 30 of the Code of Federal Regulations.

I understand from your letter that the reason for retroactively terminating the original SOO was the expiration for the running of a continuous session of Congress, under the terms of Section 6003 of the Oil Pollution Act of 1990 (OPA). At the same time that certain mandates of the OPA have been fulfilled, the Manteo Unit partners are still awaiting a decision from the U.S. Department of Commerce on appeals from the State of North Carolina's Denials of Consistency Certification on the Exploration Plan and the NPDES Permit. These appeals were filed respectively, in July 1990 and December 1990. The appellets record was reopened as recently as April 29, 1992 to admit the Environmental Science Review Panel report.

Supplemental briefs were submitted to Commerce at the end of May, 1992.

Due to the indeterminate administrative delay that has been evidenced over the past period of years and continues at present, Mobil hereby requests that the SOO be continued or reinstated pursuant to 30 CFR § 250.10(6) effective as of the necessary date specified by your letter, June 8, 1992.

Very truly yours,

/s/ Leslie J. Burton
LESLIE J. BURTON

LJB/rt/bw

cc: Manteo Partners
Craig Wyman

3322.LJB

MOBIL EXPLORATION & PRODUCING U.S. INC.

September 23,1992

VIA FEDERAL EXPRESS

Mr. Bruce G. Weetman
Regional Director
Minerals Management Service
Atlantic OCS Region
381 Elden St., Suite 1109
Herndon, Virginia 22070-4817

Dear Bruce:

Upon further review of your letter dated September 9, 1992 I wish to call your attention to further reasons for reinstating the Suspension of Operation (SOO) on the Manteo Unit. The Manteo partners are awaiting decisions on appeals from the State of North Carolina's Denials of Consistency Certification, as discussed in my letter dated September 15, 1992. In addition, we are also prevented from proceeding with an exploration well due to the requirement issued in the April 6, 1992 Report to Congress by Secretary Lujan pursuant to his responsibilities under the Oil Pollution Act of 1990 that he ". . . will not issue a permit, approve the exploration plan, or allow any drilling until the studies have been completed." We understand that the studies which the Secretary has stated as necessary will take approximately twelve months to complete. Since these studies are being conducted pursuant to the Oil Pollution Act of 1990, we continue to be precluded by that Act from exploration activity.

Thus, the same conditions that justified the original SOO continue to exist and that SOO should accordingly be reinstated. That being the case and for the same reasons that rentals were not required under the original SOO,

rental payments would not be due as we continue to be prevented from drilling. Please respond as soon as possible to this request.

Very truly yours,

/s/ Leslie J. Burton
LESLIE J. BURTON

LJB:bw

605.LJB
cc: All Manteo Partners

[DOI Logo]

UNITED STATES DEPARTMENT
OF THE INTERIOR

MINERALS MANAGEMENT SERVICE
Atlantic OCS Region
381 Elden Street, Suite 1109
Herndon, Virginia 22070-4817

Oct. 9, 1992

Ms. Leslie J. Burton
Senior Counsel
Mobil Exploration & Producing U.S. Inc.
1250 Poydras Plaza
New Orleans, LA 70113-1892

Dear Ms. Burton:

We have received your letters dated, September 15, and 23, 1992 requesting a suspension of operations (SOO) covering the 21 leases of the Manteo Unit.

Your letter of September 15, 1992 cited as your reason for requesting a SOO pursuant to 30 C.F.R. § 250.10 (b)(6) "the indeterminate administrative delay" facing the Manteo Unit partners who are "still awaiting a decision from the U.S. Department of Commerce on appeals from the State of North Carolina's Denials of Consistency Certification on the Exploration Plan and the NPDES Permit."

Your September 23, 1992 letter adds as a further reason for requesting the SOO the two studies which the Environmental Sciences Review Panel recommended. In addition, you suggest that the Minerals Management Service (MMS) should not require the payment of rentals.

On July 12, 1989, Mobil Oil Corporation (Mobil) (as a lessee of OCS leases offshore North Carolina and as probable unit operator of the anticipated Manteo Unit) entered into a Memorandum of Understanding (MOU) with the State of North Carolina and the MMS. Part II, paragraph 13 of the MOU reflected the agreement reached by the three parties as follows:

> If the State objects to Mobil's certification of consistency, or if any other administrative or judicial challenges or appeals arise, or if the issuance of the permits for Mobil's exploration activities is delayed due to any of the other circumstances contemplated by 30 C.F.R. § 250.10, upon Mobil's application, issue additional suspensions of operations, pursuant to 30 C.F.R. § 250.10, to allow for the resolution of such matters and to allow Mobil two drilling seasons under the EP thereafter. For the purpose of this paragraph, a drilling season is the period of May 1 through October 31.

Consistent with that agreement and pursuant to Mobil's requests for a SOO, and as authorized by the regulations at 30 C.F.R. § 250.10(b)(4) and (6), the MMS hereby issues a SOO for the 21 leases of the Manteo Unit. The effective date of the SOO is June 8, 1992. In accord with your request, the SOO will expire when the two studies have been accepted by MMS and when the U.S. Department of Commerce renders a decision on the appeals from the State of North Carolina's Denials of Consistency Certification on the Exploration Plan and the NPDES Permit.

The terms of the leases covered by this suspension will be extended for a period of time equal to the period the suspension is in effect. 30 C.F.R. § 250.10(f). No payment of rental is required during the period of the sus-

pension until MMS accepts the two studies. 30 C.F.R. § 218.154(a) and 30 C.F.R. § 218.154(b)(2).

The 21 leases affected by this SOO are as follows:

Lease	Block	Lease	Block
00225	246	00236	467
00226	247	00237	510
00227	290	00238	511
00228	291	00239	553
00229	334	00240	554
00230	335	00242	597
00231	378	00243	598
00232	379	00244	640
00233	422	00446	555
00234	423	00448	641
00235	466		

By copy of this letter, we are informing the other seven participants in the Manteo Unit of our decision.

Sincerely,

/s/ Bruce G. Weetman
BRUCE G. WEETMAN
Regional Director

cc: MMS Royalty Management
(Unit Agreement No. 752-290001-0)
(RMP Attn: Charles Ross, MS 3240)
Amerada Hess Corporation, Chevron U.S.A. Inc., Conoco Inc., Marathon Oil Company, OXY USA Inc., Shell Offshore Inc., Union Oil Company of California

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

No. 92-331C
(Judge Robinson)

CONOCO INC., *et al.*,
Plaintiffs,

v.

THE UNITED STATES,
Defendant.

DEFENDANT'S RESPONSE TO THIRD PARTY PLAINTIFFS' THIRD SET OF REQUESTS TO ADMIT INTERROGATORIES

Defendant submits the following response to "third party plaintiffs' " third set of requests to admit and interrogatories.

Definitions

Definition No. 2(a)

Defendant objects to definition number 2(a) to the extent that it seeks information protected by the Privacy Act, 5 U.S.C. § 552a.

Definition No. 2(b)-(c).

Defendant objects to definition numbers 2(b)-(c) as overly broad and unduly burdensome.

Definition No. 3.

Defendant objects to definition number 3 to the extent that it seeks to require a search of the materials of every

agency of the Government as overly broad and unduly burdensome.

REQUEST TO ADMIT NO. 24

Admit that no PLAN OF EXPLORATION submitted to the United States Department of the Interior with respect to an OCS LEASE has ever been disapproved based upon the determinations set forth in 43 U.S.C. § 1340 (c)(1)(A) and (B).

RESPONSE:

Admits.

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

No. 92-331-C

CONOCO INC.,
Plaintiff,

AMERADA HESS CORPORATION, *et al.*,
Third-Party Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

DEPOSITION OF DAVID COURTLAND O'NEAL

Phoenix, Arizona

August 31, 1993

* * * *

[2] DEPOSITION OF DAVID COURTLAND O'NEAL was taken on August 31, 1993, commencing at 8:12 a.m., at the law offices of Meyer, Hendricks, Victor, Osborn & Maledon, P.A., 2929 North Central Avenue, Suite 2100, Phoenix, Arizona, before CHRISTINA L. LARSEN, a Notary Public in and for the County of Maricopa, State of Arizona.

The plaintiff was represented by its attorneys, Vinson & Elkins, by Mr. W. Dalton Tomlin.

The third-party plaintiffs were represented by their attorneys, Covington & Burling, by Mr. E. Edward Bruce.

The defendant was represented by its attorneys, the Department of Justice, by Mr. Mark A. Melnick and Ms. Nadira Clarke.

* * * *

[6] DAVID COURTLAND O'NEAL,

a witness herein, having been first duly sworn by the Notary Public to speak the truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. BRUCE:

Q. Mr. O'Neal, for the record, would you state your full name, please?

A. David Courtland O'Neal.

Q. And where do you presently reside?

A. I reside in Scottsdale, Arizona.

Q. Are you presently employed? Do you have a professional affiliation here in Arizona?

A. I do not. I have O'Neal Consulting Company.

Q. That's here in Arizona?

A. Yes.

Q. And that's your present employment?

A. Right.

MR. BRUCE: Mr. O'Neal, for the record, I'm going to ask this be marked Exhibit No. 23.

(Deposition Exhibit No. 23 was marked for identification.)

* * * *

[10] Q. And in what capacity did you serve at the Interior Department when you returned in 1989?

A. I went back to Interior as the Assistant Secretary of Interior for Lands and Minerals.

Q. If you would, sir, just describe in a general way your responsibilities as Assistant Secretary. Perhaps it would be easier for you to describe the departments or sections that you supervised in that capacity.

A. There were three bureaus under the Assistant Secretary for Lands and Minerals. One was the Bureau of

Land Management. One was the Office of Surface Mining. And the other was Minerals Management Service.

* * * *

[64] Q. And that's what this ER was, in your understanding?

A. Yes.

Q. And you were advised, you believe, that this was the most extensive ER done for any one well ever in connection with the OCS program; is that correct?

A. That's what I was told by the career professionals at the Minerals Management Service.

Q. And you acted on their professional advice?

A. Uh-huh.

Q. Would you say yes, sir?

A. Yes.

MR. BRUCE: Let the record show he said "uh-huh," and I wanted to make it clear what he said.

Q. BY MR. BRUCE: So the Interior Department was informing the Commerce Department in an official way that this Mobil proposal had received the most extensive and intensive [65] environmental examination that had ever been afforded an exploration well in the OCS program?

A. That's correct.

Q. Similarly, the Interior Department was informing the Commerce Department that there would be no significant impacts offshore for any resource and no significant impacts that would affect the State coastal zone; is that correct?

A. That's correct.

Q. And you were acting, again, on the professional advice of people at MMS in making this report to Mr. Castle; is that right?

A. That's correct.

Q. And you believed it to be true?

A. Yes, I do.

Q. Had these professionals ever misled you in the past on issues of this sort?

A. No, they hadn't.

* * * *

[83] Q. Now, did the piece of legislation—of course, at this point on August 1, it was a proposal the Secretary is expressing the Department's opposition to—did this piece of legislation ultimately get enacted?

A. My understanding is it did.

Q. As part of the—as a section of the—

A. As a section of the conference on the Oil Pollution Liability and Compensation Act.

Q. Was this something that came to be known as the Outer Banks Protection Act, this proposal that the Secretary is criticizing here?

A. I don't know. I don't know what it was called. It was, in fact, the Oil Pollution Liability and Compensation Act. I don't know if it was called the Outer Banks. I didn't refer to it that way.

Q. Is your understanding consistent with that recited by the Secretary that the administration strongly opposed the delay of exploratory activity off of North Carolina that would come about as a result of Section 6003 as proposed?

A. Yes, we did strongly oppose it.

[84] Q. Why did you oppose it, sir? Why did the Department oppose it?

A. Well, again, it kept us from carrying out our responsibilities under the OCS Lands Act, and it also was done in a manner that I believe was offensive to the administration in that they didn't have any hearings on it or anything else. Just in conference committee, they, Walter, inserted that amendment.

Q. By Walter, you mean—

A. Walter Jones, the Representative from North Carolina.

Q. So you were not called upon to provide or given an opportunity to provide any evidence as to the necessity or desirability of Section 6003; is that correct?

A. That's correct.

Q. Do you know whether Congressional hearings were held on other parts of this more comprehensive Oil Spill Act of 1990?

A. I believe the hearings were held as usual, but I think this was done in conference without the—without going through the hearing process in either house.

Q. Were you aware of any shortcomings, [85] insufficiencies, gaps, or the like, in the environmental information to proceed with exploration offshore North Carolina that would justify Section 6003?

A. No, I'm not aware of any. If there had been, they would have used that, not snuck it in.

Q. When you say they would have used such a lapse or gaps instead of sneaking it in, who is the "they" you're talking about, sir?

A. Well, Walter Jones, the Representative from North Carolina, knew the issues well enough, had control of his committee well enough, that if there had been a flaw and he was opposed, he would have used that flaw and had hearings and all the trappings to make it that kind of a part of the record, rather than waiting and cutting his own deal without going through any hearings.

Q. Did this Section 6003 suffer from, in your judgment, suffer from the same deficiencies that you have previously described with respect to the Florida and Alaska appropriations moratoria?

MR. MELNICK: Objection. The question is ambiguous.

Q. BY MR. BRUCE: If you understand the question, you can answer it. If you don't, I can [86] rephrase it.

A. Yeah, I understand the question. All three were basically the same reasons.

Q. So you put this North Carolina restriction into the same category as you put the Alaska and Florida restrictions; is that correct?

A. Yes, I do.

Q. They are like Alaska and Florida. There is no scientific basis for this restriction; is that right?

A. That is correct.

Q. Like Florida and Alaska, they are inconsistent with the OCS Lands Act and the National Environmental Policy Act; is that correct?

MR. MELNICK: Objection. Calls for a legal conclusion.

MR. BRUCE: You can answer the question, sir.

A. BY THE WITNESS: That is correct, in my estimation.

Q. BY MR. BRUCE: You would refer to this as being arbitrary the way you referred to the appropriations moratoria; is that correct?

A. I do.

[87] Q. By "this," of course, I mean Section 6003. Do you reaffirm your answer?

A. Yes, I do.

Okay. And in the same way that this too would be an act of bad faith on the part of the Federal Government?

A. That's correct.

Q. And this too, Section 6003, would be inconsistent with the terms of the leases that were issued for North Carolina?

MR. MELNICK: Objection. Calls for a legal conclusion?

A. BY THE WITNESS: In my opinion.

Q. BY MR. BRUCE: In your opinion what, sir? Yes or no?

A. Yes.

Q. In your opinion, it would be inconsistent with the terms of the leases?

A. Yes, it would be.

MR. BRUCE: Thank you. I could have brought the Costlow deposition exhibit but I forgot to. We will just have to mark it again. This will be 41.

(Deposition Exhibit No. 41 was marked for identification.)

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

(Caption Omitted in Printing)

DEPOSITION OF BRUCE G. WEETMAN

Washington, D.C.

Tuesday, February 15, 1994

* * * *

[115] **EXAMINATION**

BY MR. TAURMAN:

Q Mr. Weetman, were you aware of the Outer Banks Protection Act before it was enacted in August of 1990?

A No, I wasn't.

Q Do you know how the Outer Banks Protection Act became a part of the Oil Pollution Act of 1990?

A I don't understand what you're driving at.

Q Were you aware that Congressman Jones or North Carolina was the chairman of the conference committee on the Oil Pollution Act?

A Was I aware that he was the chairman?

Q Of the conference committee in Congress that was considering the Oil Pollution Act in July and August of [116] 1990.

A I don't remember him being—whether he was the chairman of that. I know he was a committee chairman. I was not aware he was conference chairman.

Q Were you aware in 1990 that Congressman Jones of North Carolina was seeking an appropriations moratorium on exploration of offshore North Carolina OCS?

A Yes.

Q Were you aware that he was unsuccessful in getting an appropriations moratorium?

A Yes.

Q And are you aware that shortly thereafter, he was able, as chairman of the conference committee, to put his Outer Banks Protection Act provisions into the Oil Pollution Act of 1990?

A Was I aware of it?

Q Yes.

A After it came out in the Act, yes.

* * * *

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

(Caption Omitted in Printing)

DECLARATION OF MARGO E. JACKSON

1. I, MARGO E. JACKSON, have been employed as Assistant General Counsel in the Office of General Counsel, at the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, since October 1989.

8. I am familiar with the regulations and requirements of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 *et seq.*, as amended.

3. I am the supervisor of the Office of the Assistant General Counsel for Ocean Services of NOAA General Counsel which is handling two appeals submitted by Mobil Oil Exploration & Producing Southeast, Inc. (Mobil), from objections of the State of North Carolina to Mobil's proposed exploration of Manteo Area Block 467. On July 31, 1990, and on December 3, 1990, pursuant to CZMA § 307(c)(3)(A) and (B), 16 U.S.C. § 1456(c)(3)(A) and (B), Mobil requested the Secretary of Commerce to override North Carolina's objections to Mobil's proposed drilling discharge activities and a proposed exploration plan for Manteo Area Block 467 (Mobil-Manteo CZMA appeals).

4. I am the supervisor with primary responsibility for handling these two appeals filed by Mobil.

5. I am aware of the enactment of the Oil Pollution Act of 1990 (OPA), and § 6003 of the OPA which included

the Outer Banks Protection Act (OBPA), which established the Environmental Sciences Review Panel (ESRP). Pub. L. No. 101-380, § 6003, 104 Stat. 484, 555 (1990).

6. I am aware that as a result of this legislation, the Secretary of the Interior required that certain studies be completed.

7. On April 29, 1992, because the consistency appeal decision had not yet been reached, the report of the ESRP was admitted into the administrative records of the two Mobil-Manteo CZMA appeals.

8. I am aware of no circumstances whereby the Secretary of Commerce's decisions on the two Mobil-Manteo CZMA appeals have been suspended, impeded, or otherwise delayed by enactment or implementation of the OPA, OBPA, or activities of the ESRP, or made contingent upon the completion of any of the studies required by their enactment.

9. I was also the supervisor with primary responsibility for handling two separate appeals submitted by Union Oil Company of California (Unocal) and Mobil Oil Exploration & Production U.S. Inc. (MEPUS), (as agent for Mobil Exploration & Production North America Inc. (MEPNA)), from objections of the State of Florida to Unocal's proposed exploration of Blocks 629 and 630 and Mobil's proposed exploration of Block 799.

10. I am aware that on December 21, 1988, pursuant to CZMA § 307(c)(3)(B), 16 U.S.C. § 1456(c)(3)(B), Unocal requested the Secretary of Commerce to override Florida's objections to its proposed exploration plan for Blocks 629 and 630.

11. I am aware that in January 1989, pursuant to CZMA § 307(c)(3)(B), 16 U.S.C. § 1456(c)(3)(B), Mobil also requested the Secretary of Commerce to override

Florida's objections to its proposed exploration plan for Block 799.

12. I am aware that in 1989 the President of the United States George W. Bush established the Outer Continental Shelf Leasing & Development Task Force ("Task Force") "to review and resolve environmental concerns" about three OCS oil and gas lease sales off Florida and California, scheduled for fiscal year 1990.

13. I am aware that in the 1989 and 1990 Department of the Interior Appropriation Acts, Congress prohibited the Department of the Interior from leasing and approving or permitting any exploratory drilling in the eastern Gulf of Mexico in the areas south of 26 degrees North latitude and east of 86 West longitude so that additional enivronmental information could be collected.

14. I am aware that in the 1991, 1992, 1993 and 1994 Department of the Interior Appropriations Acts (Interior Appropriations Acts), Congress restricted the Department of the Interior from using any of its funds "for the conduct of offshore leasing and related activities placed under restriction in the President's moratorium statement of June 26, 1990, in the areas . . . the Eastern Gulf of Mexico south of 26 degrees north latitude . . ."

15. I am aware that pursuant to a November 1989 agreement between Unocal, Mobil and the State of Florida, the final briefing schedule on the two CZMA appeals would be established after the Task Force report was completed, but no later than January 1990, and if the report was not complete, the issue of a final briefing schedule would be discussed at that time.

16. I am aware that on April 6, 1990, the Secretary determined that in order to facilitate an efficient decision on the two CZMA appeals and because it was unknown

when the Task Force report would be available for the Secretary's review, a final briefing schedule was established.

17. I am aware of the June 26, 1990 statement of President of the United States George W. Bush in which he asked the Secretary of the Interior "to begin a process that may lead to the buyback and cancellation" of the 73 leases offshore Florida which were affected by his decision, which includes the leases at issue in the Unocal and Mobil CZMA appeals.

18. I am aware that in September 1990, after the Department of Commerce had considered what, if any, effect the President's decision would have on the leases at issue in the two CZMA appeals, and that because there was no agreement between the parties as to those issues, the Secretary decided to proceed in his determinations on the two CZMA appeals.

19. I am aware of no other circumstances whereby the Secretary of Commerce's decisions on the Unocal and Mobil CZMA appeals have been suspended, impeded, or otherwise delayed by enactment or implementation of the 1989, 1990, 1991, 1992, 1993 and 1994 Interior Appropriation Acts, the President's June 26, 1990 decision, or by any other actions.

20. Furthermore, I have read the *First Amended Complaint* of Third Party Plaintiffs Amoco Production Company (No. 52), Union Oil Company of California (No. 47), Texaco Exploration and Production Inc. (No. 48), Chevron U.S.A., Inc. (No. 55), Mobil Exploration & Producing North America Inc. (No. 48), Shell Offshore Inc. (No. 56), and OXY USA Inc. (No. 53), where they state that "The extraordinary delay by the Secretary of Commerce in deciding the CZMA appeal is a direct result of the congressional appropriations moratoria and the

President's June 1990 decision" and these statements are wholly erroneous and contrary to the facts of this record. As I stated above, the final issuance of the Secretary's decisions was delayed by less than three months, the period of time between the announcement of the President's decision on June 26, 1990 and the Secretary's decision in September 10, 1990 to proceed to a decision in the two CZMA appeals.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the above statements are true and correct. Executed this 6 day of April, 1994.

/s/ Margo E. Jackson

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

(Caption Omitted in Printing)

DECLARATION OF PAUL MARTIN

1. I, PAUL MARTIN, was employed as Regional Supervisor for Field Operations in the Atlantic Region Office of the Outer Continental Shelf (OCS) of the Minerals Management Service (MMS), U.S. Department of the Interior, from February 1981 until February 1985, and as Chief of the Offshore Resource Evaluation Division in MMS, since February 1985.

2. I am familiar with the regulations and requirements of the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. §§ 1301 *et seq.* (1990).

3. As Regional Supervisor, I was responsible for supervising the approval and management of Exploration Plans (EP) submitted by companies to conduct exploratory drilling activities in the offshore areas of the Atlantic OCS Region.

4. I am aware that on April 26, 1982, an EP was submitted by Chevron U.S.A., Inc. (Chevron), as a partner with Conoco, Inc., Shell Oil Company (now Shell Offshore Inc.), and Cities Service Company, (now Oxy USA Inc.), for Lease No. OCS-A 00237, comprising block 510, OPD NI 18-2, offshore North Carolina.

5. I am aware that on July 9, 1982, MMS approved Chevron's EP for Block 510, OPD NI 18-2.

6. I am aware that on July 19, 1982, Chevron submitted an Application for Permit to Drill (AFD) an exploratory well on Lease No. OCS-A 00237, Block 510, OPD NI 18-2.

7. I am aware that since Chevron has not fulfilled all of the requirements incumbent on an applicant before an APD can be considered for approval, such as positioning of oil spill containment equipment in the vicinity of the drill site, MMS has taken no final action on the Chevron APD.

8. I am aware of no additional action taken by Chevron or its partners to pursue drilling an exploratory well on Lease No. OCS-A 00237, Block 510, OPD NI 18-2.

9. I am aware that on May 17, 1982, an EP was submitted by Arco Exploration Company (Arco), as a partner with Murphy Oil Company (new Murphy Exploration & Production Company) and Odeco Oil & Gas Company, for Lease Nos. OCS-A 00247 and OCS-A 00248, comprising Blocks 709 and 710, OPD NI 18-5, Offshore North Carolina.

10. I am aware that on October 27, 1982, MMS approved Arco's EP for Lease Nos. OCS-A 00247 and OCS-A 00248, Blocks 709 and 710, OPD NI 18-5.

11. I am aware of no other actions taken by Arco or its successors in interest, Murphy Exploration & Production Company or Murphy Oil U.S.A., Inc., to pursue drilling an exploratory well on Lease Nos. OCS-A 00247 and OCS-A 00248, Blocks 709 or 710, OPD NI 18-5.

12. I am aware that on August 20, 1990, an EP was submitted by Mobil Exploration & Producing Southeast, Inc. (Mobil), as Unit Operator of the Manteo Unit, for Lease No. OCS-A 00236, Block 467, OPD NI 18-2, offshore North Carolina.

13. Iam aware of no other EPs which have been submitted for leases in the Atlantic OCS Region which are a subject of this litigation.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the above statements are true and correct. Executed this 8th day of April, 1994.

/s/ Paul E. Martin

[DOI Logo]

UNITED STATES DEPARTMENT OF
THE INTERIOR

MINERALS MANAGEMENT SERVICE
Washington, DC 20240

Jul. 22, 1994

Ms. Dianna Josephson
Deputy Under Secretary for
Oceans and Atmosphere
U.S. Department of Commerce
14th St. and Constitution Ave., N.W.
Room 5810
Washington, D.C. 20230

Dear Ms. Josephson:

Enclosed for your information and submitted for inclusion in the record are the following studies relevant to the appeal of North Carolina's objection to consistency certification for Mobil Oil Exploration and Producing Southeast, Inc.'s exploration plan for Manteo Block 467:

Benthic Study of the Continental Slope off Cape Hatteras North Carolina; and

Coastal North Carolina Socioeconomic Study.

These two studies were undertaken as a result of a recommendation of the North Carolina Environmental Sciences Review Panel. My office has recently completed its review of these studies.

If you have any questions concerning them, please let us know.

Sincerely,

/s/ Thomas Gernhofer
THOMAS GERNHOFER
Associate Director for
Offshore Minerals Management

Enclosures (2)

cc: Governor of North Carolina
Manager, Environmental Regulations and
Loss Prevention, Mobil Exploration
and Production—U.S.

DECISION AND FINDINGS

IN THE

PLAN OF EXPLORATION

CONSISTENCY APPEAL OF

MOBIL OIL EXPLORATION &

PRODUCING SOUTHEAST, INC.

FROM AN OBJECTION BY THE

STATE OF NORTH CAROLINA

SEPTEMBER 2, 1994

DECISION

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EXECUTIVE SUMMARY

Introduction

Mobil Oil Exploration & Producing Southeast, Inc. (Mobil) has requested the Secretary of Commerce to override the State of North Carolina's (State's) objection to Mobil's proposed Plan of Exploration (POE) of the outer continental shelf (OCS) offshore North Carolina. Mobil proposes to drill an exploratory well in OCS Manteo Area Block 467 in order to evaluate its hydrocarbon potential. As explained in more detail below, the Secretary declines to override North Carolina's objection.

Mobil has also filed a separate appeal from the State's prior objection to its proposed discharge activities at the drill site. A Secretarial decision in that appeal is being issued concurrently with the decision in this appeal. In that companion decision, the Secretary also declines to override North Carolina's objection to Mobil's proposed drilling discharges at the drill site. Accordingly, North Carolina's objection under the CZMA prevents any Federal agency from granting necessary permits or licenses for Mobil's proposed discharge of drilling wastes or Mobil's proposed Plan of Exploration.

Mobil's appeal arises under the Coastal Zone Management Act (CZMA), an act administered by the National Oceanic and Atmospheric Administration (NOAA), an agency within the Department of Commerce. Section 307 of the CZMA provides that persons submitting an OCS POE to the Secretary of the Interior which affects any land or water use or natural resource of the coastal zone, shall certify that activities described in detail in the POE are consistent with the enforceable policies of a state's coastal management program.

Mobil has submitted its POE for Manteo Area block 467 to the Minerals Management Service of the Department of the Interior. Because North Carolina has objected to the project, Federal agencies may not issue any permit or license necessary for Mobil's POE to proceed, unless the Secretary of Commerce finds that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

Background

About 39 miles off North Carolina's coast lies OCS Lease A-0236, also known as Manteo Area Block 467, for which Mobil is the operator. Mobil proposes to drill one exploratory well in search of natural gas at this site and conduct support activities primarily out of Morehead City, North Carolina. Mobil's proposed drilling site is located near "the Point," a biologically unique area defined by the convergence of the Gulf Stream, slope, and shelf waters, containing significant natural resources. Moreover, fish resources found near The Point are harvested by North Carolina fishermen. Mobil submitted its proposed POE for Manteo Area Block 467 to the Minerals Management Service of the Department of the Interior (DOI), and certified that the activities described in detail in the POE were consistent with North Carolina's coastal management program.

On November 19, 1980, the State objected to Mobil's proposed POE on the basis of a lack of necessary site-specific data and information. *See* 15 C.F.R. § 930.64(d). Specifically, the State contends that there is insufficient information to make a consistency determination on the impacts arising from Mobil's activity. The State identified informational concerns relating to coastal resources and uses potentially affected by Mobil's proposed activity.

Under § 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. § 1456(C)(3)(B), and the implementing regulations, the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for Mobil's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that each activity described in detail in Mobil's POE is either consistent with the objectives or purposes of the CZMA (Ground I), or otherwise necessary in the interests of national security (Ground II).

In accordance with CZMA § 307(c)(3)(B) and 15 C.F.R. Part 930, Subpart H, Mobil filed with the Secretary an appeal from the State's objection to Mobil's consistency certification for the proposed POE. Mobil appealed pursuant to Ground I and Ground II. Additionally, three threshold issues were raised during the course of the appeal.

Threshold Issues

Upon consideration of the information submitted by Mobil, the State, the public, and several Federal agencies, the Secretary made the following findings on the threshold issues:

A. *Compliance with the CZMA and Its Regulations*

Mobil contended that the State failed to properly follow the statutory and regulatory requirements for formulation of a consistency objection on the grounds of insufficient information and that therefore the State's objection is defective. Upon examination of the record of this appeal, the Secretary found that the State had complied with the CZMA and its implementing regulations in objecting to Mobil's proposed POE.

B. *Request for a Dismissal*

The State requested that the Secretary dismiss Mobil's Ground I claims for good cause, arguing that Mobil failed to provide data and information necessary to the Ground I test. The Secretary declined to dismiss Mobil's Ground I claims for good cause. The Secretary found that in this case if there is insufficient data and information in the record to make the findings necessary for an override, rather than dismiss part of the appeal as the State has requested, the Secretary will issue a decision which will reflect an inability to make these findings.

C. *Adequacy of Information*

The parties raised an issue as to the adequacy of information. The State argued that Mobil has failed to provide adequate information to assess the impacts of its proposed activity, let alone prove that the grounds for an override have been met. Mobil asserted that there is adequate information on the effects of the proposed POE, and that any effects are minor. The Secretary found that in examining the information in the record of the appeal, the Secretary will necessarily determine the adequacy of information.

D. *Conclusions Regarding Threshold Issues*

The Secretary determined that threshold issues raised by Mobil and the State of North Carolina did not preclude him from considering the merits of this case.

Ground I: Consistent with the Objectives or Purposes of the CZMA

To find that the proposed activity satisfies Ground I, the Secretary must determine that the project satisfies all four

of the elements specified in the regulations implementing the CZMA (15 C.F.R. § 930.121). If the project fails to satisfy any one of the four elements, it is not consistent with the objectives or purposes of the CZMA and federal licenses or permits may not be granted. The four elements of Ground I are:

1. The proposed activity promotes one or more of the competing national objectives or purposes contained in the CZMA.

2. The proposed activity's individual and cumulative adverse effects on the coastal zone are outweighed by its contribution to the national interest.

3. The proposed activity will not violate any requirements of the Clean Water Act or the Clean Air Act.

4. There is no reasonable alternative available that would allow Mobil to explore Manteo Area Block 467 in a manner consistent with the State's coastal management program.

The Secretary made the following findings with regard to Ground I:

1. Mobil's proposed POE furthers one or more of the objectives or purposes of the CZMA because the CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency. Mobil's exploration for offshore gas resources serves the objective of energy self-sufficiency.

2. The information in the record is inadequate to determine whether the national interest benefits of Mobil's proposed POE outweigh the proposed activity's adverse effects on the State's coastal resources and uses.

3. Mobil's proposed POE will not violate the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

4. There is no reasonable alternative available to Mobil that would allow its proposed POE to be carried out in a manner consistent with the State's coastal management program.

Ground II: Necessary in the Interest of National Security

There will be no significant impairment to a national defense or other national security interest if Mobil's proposed POE is not allowed to go forward as proposed.

Conclusion

Because Mobil's proposed POE does not meet the requirements of either Ground I or Ground II, the activity may not proceed as proposed.

LIST OF ABBREVIATIONS AND DEFINED TERMS

CAA—Clean Air Act
CMP—Coastal Management Program
COE—Corps of Engineers
CSA—Continental Shelf Associates, Inc.
CWA—Clean Water Act
CZMA—Coastal Zone Management Act
DEM—Division of Environmental Management
DER—Draft Environmental Report
DOD—Department of Defense
EA—Environmental Assessment
EPA—Environmental Protection Agency
ESRP—Environmental Sciences Review Panel
DOE—Department of Energy
DOI—Department of the Interior
FER Final Environment Report
FWS—Fish and Wildlife Service
MMS—Minerals Management Service
MOEPSI—Mobil Exploration & Producing Southeast, Inc.
NAAQS—National Ambient Air Quality Standards
NCDMF—North Carolina Division of Marine Fisheries
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
NPDES—National Pollutant Discharge Elimination System
NRC—National Research Council
NSC—National Security Council
OCRM—Office of Ocean and Coastal Resource Management
OCS—Outer Continental Shelf
OOC—Offshore Operators Committee
POE—Plan of Exploration
SAFMC—South Atlantic Fishery Management Council
State—State of North Carolina

DECISION

I. FACTUAL BACKGROUND

In Federal waters, about 39 miles off North Carolina's coast, lies Outer Continental Shelf (OCS) Lease OCS A-0236, also known as Manteo Area Block 467. *See* Figure 1. This area was leased in September 1981 by Mobil [1] and its partners [2] in OCS Lease Sale 56. Mobil is the operator of the lease. Mobil's Statement in Support of a Secretarial Override (Mobil's Initial Brief), at 2. The lease block lies at the crest of a buried reef complex which runs in a general north-south direction along the edge of the Mid-Atlantic OCS.[3] Mobil's Initial Brief at 13.

The activity at issue in this case is Mobil's proposed one-well Plan of Exploration (POE) of Manteo Area Block

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1 Mobil Oil Exploration & Producing Southeast, Inc., a subsidiary of Mobil Exploration & Producing U.S. Inc., is the proposed operator. For the purposes of description in this decision, both entities will be referred to as "Mobil."

2 The administrtaive record for this appeal indicates that Mobil's partners in the Manteo Area Block 467 project are the Martharon Oil Company and the Amerada Hess Corporation. *See* Manteo Unit Operating Agreement, Exhibit B.

3 The Minerals Management Service (MMS) estimates that there is a 90 percent chance that no hydrocarbons will be discovered in the area of which Block 467 is a part. If a discovery is made, however, the discovery is likely to be gas rather than oil, based on geochemical analyses of previous wells drilled on the Atlantic OCS. Final Environmental Report on Proposed Exploratory Drilling Offshore North Carolina, MMS, August 1990, (FER), at III-5. The potential size of a discovery could be more than five trillion cubic feet of natural gas. Letter from David C. O'Neal, Assistant Secretary, Land and Minerals Management, Department of the Interior, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, June 4, 1991. If such a discovery is made, the MMS estimates that approximately 103 wells would be required to recover this amount of gas. FER at IV-13.

467. On August 20, 1990, Mobil submitted its POE for Manteo Area Block 467 to the Minerals Management Service of the Department of the Interior (DOI), and certified that the activities described in detail in the POE were consistent with North Carolina's Coastal Management Program (CMP). Mobil proposes to drill one exploratory well in a water depth of 2,690 feet and estimates the drilling schedule to be approximately 114 days, sometime between May and October. *See* Mobil's Initial Brief at 14. Mobil will support the drilling operation with a facility in Morehead City, North Carolina.

[Figure 1 Map Omitted in Printing]

Mobil's Initial Brief at 15. The proposed drilling site is located, however, near an area known as "The Point."

The Point is an area characterized by unique physical and biological qualities. Physically, The Point is a mobile, transitional ocean area defined by the convergence of the Gulf Stream, continental slope, and shelf waters. The Point is not a fixed location, rather its position fluctuates with changes in the location of the western boundary of the Gulf Stream. Water mass convergences at The Point concentrate nutrients, plankton and floating materials near the sea surface, resulting in weedlines. Biologically, The Point is a highly productive and ecologically unique area essential to the State's coastal zone. Fish resources found near The Point such as yellowfin, bluefin, blackfin, and bigeye tuna, white and blue marlin, sailfish, swordfish, wahoo, and dolphin are harvested by North Carolina fishermen. Scientists view the area as one of anomalously high biomass for the continental slope.[4] In addition to

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4 Testimony of Dr. Alan Hulbert before the Committee on Interior and Insular Affairs (Mobil NPDES Exhibit 28). Mobil refers to this testimony in its Final Brief at 25. *See* note 14, *infra*.

the significant fishery resources and the unusually abundant benthic community, marine bird populations are extensive, and turtles, whales and dolphins have regularly been observed at the site. *Id.* Many species of turtles, birds and mammals that frequent The Point are endangered and vulnerable to adverse environmental effects. The National Marine Fisheries Service (NMFS) has identified the area as extremely important to NMFS and NOAA trust resources. Memorandum from William W. Fox, Jr., Director, NMFS, to Margo Jackson, Assistant General Counsel for Ocean Services, April 9, 1991, incorporating prior NMFS comments on Mobil's proposed activities subject to a National Pollutant Discharge Elimination System (NPDES) permit (NMFS Comments).

On November 19, 1990, the State of North Carolina (State) objected to Mobil's proposed POE on the basis of a lack of necessary site-specific data and information.[5] *See* 15 C.F.R. § 930.64(d). Specifically, the State contends that there is insufficient information to make a consistency determination on the impacts arising from Mobil's activity. State Objection Letter. The State also renewed its request that Mobil complete a four-part fisheries study.[6] *Id.* The State claims that the information is necessary to determine the biological importance of the proposed drill

[5] *See* Letter from Roger N. Schecter, Director, Division of Coastal Management, to William C. Whittemore, Senior Counsel, Mobil, November 19, 1990 (State Objection Letter).

[6] The first portion of the proposed study is an investigation of larval and juvenile abundance and distribution in the vicinity of the Mobil project. The second part of the State's proposal is to gather additional information centered on the *Sargassum* community known to occur in the area of the proposed activity. The third portion of the proposed study is to measure the effects of drilling waste deposition on bottom organisms. The fourth section of the State's proposal is documentation of the commercial and recreational fishing in the vicinity of the drill site and The Point.

site area to the State's fisheries, the importance of the area to birds and marine mammals, and the economic importance of the proposed drill site area to the State's fishermen. *Id.* In addition to explaining the basis of its objection the State notified Mobil of its right to appeal the State's decision to the Department of Commerce (Department) as provided under § 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(B), and the implementing regulations, 15 C.F.R. Part 930, Subpart H.

Pursuant to CZMA § 307(c)(3)(B) and 15 C.F.R. § 930.131, the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for Mobil's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that each activity described in detail in Mobil's POE, notwithstanding the State's objection, is either consistent with the objectives or purposes of the CZMA (Ground I), or otherwise necessary in the interests of national security (Ground II).[7]

II. APPEAL TO THE SECRETARY OF COMMERCE

On December 3, 1990, in accordance with CZMA § 307(c)(3)(B) and 15 C.F.R. Part 930, Subpart H, Mobil filed with this Department a notice of appeal from the State's objection to Mobil's consistency certification for the proposed POE.[8] Mobil's notice of appeal requested

[7] There are references in the record to the Deputy Secretary as the decisionmaker in this case because on May 19, 1989, then Secretary of Commerce Robert Mosbacher recused himself from issuing decisions in appeals involving oil and gas issues and delegated that authority to the Deputy Secretary. I have not recused myself from issuing this decision.

[8] Letter from William C. Whittemore, Senior Counsel, Mobil to Hon. Robert A. Mosbacher, Secretary of Commerce, December 3, 1990 (notice of appeal).

an extension of time to submit its full supporting statement, data and other information. By letter of January 8, 1991, the Department set an initial briefing schedule for the parties.[9] Mobil perfected its appeal by filing a brief with supporting information and data on February 16, 1991. The State filed an initial brief with the Department on May 21, 1992.

Mobil has also filed a separate appeal from the State's prior objection to its proposed discharge activities at the drill site. A Secretarial decision in that appeal is being issued concurrently with the decision in this appeal.[10]

The administrative record of this appeal also contains comments submitted by the public and Federal agencies. By way of notices in the *Federal Register* and local newspapers,[11] the Department requested public comments on issues raised in this appeal. Public comments were received and incorporated as part of the record of this appeal.[12] Oral and written comments were received from Mobil, the State, local public officials, the public and various interest groups. On May 5, 1991, the record closed for public comments. The Department also solicited the views of fourteen Federal agencies,[13] and the National Security Council (NSC) regarding the two grounds for a Secretarial override of the State's objection. With the exception of the Department of State and the Fish and Wildlife Service, all of the agencies and the NSC responded with comments.

As with other aspects of this appeal, the final briefing schedule and the closure of the administrative record were the subject of discussion between Mobil and the State. The parties concurrently filed their final briefs on August

[9] Letters from Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, to William C. Whittemore, Senior Counsel, Mobil, and Roger N. Schecter, Director North Carolina Division of Coastal Management, January 8, 1991.

[10] Since Mobil's NPDES permit appeal and POE appeal for the Manteo Area Block 467 drill site have not been consolidated, they contain distinct administrative records upon which I will base my decisions in the two appeals. However, much of the information concerning Mobil's activities is common to the record of the two appeals. To avoid unnecessary duplication and repetition, all of the arguments, facts and documents filed by the State in the related NPDES permit consistency appeal have been incorporated by the State into its initial brief by reference. North Carolina's Response to the Secretary's Briefing Request and to Mobil's Statement of Reasons and Brief, (State's Initial Brief), at 17. Mobil has also incorporated by reference into its briefing on this appeal, certain Mobil exhibits filed in its NPDES appeal. Mobil's Initial Brief at 3, n.4. Further, some Federal agencies have included their comments for the NPDES appeal in their comments for this appeal. I will include the NPDES acronym when referring to exhibits, comments and briefs in the NPDES appeal which have been incorporated into the record of this appeal. Finally, I hope that much of the discussion of issues is similar in the decision documents for these two appeals.

[11] *See* 56 *Fed. Reg.* 12185 (March 22, 1991), 56 *Fed. Reg.* 14289 (April 8, 1991), and notices in the Carteret County *News Times* (March 29, April 3, 5, 1991) and the *Virginian Pilot* (April 1, 2, 3, 1991).

[12] On January 29, 1991, pursuant to 15 C.F.R. § 930.129, the State requested that the Secretary hold a public hearing concerning the issues raised in Mobil's appeal. Letter from Robin W. Smith, North Carolina Assistant Attorney General, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, January 29, 1991. The Department, however, declined to hold a public hearing as requested by the State. *See* Letter from Thomas A. Campbell, General Counsel, NOAA, to Robin W. Smith, North Carolina Assistant Attorney General, March 6, 1991.

[13] Comments were solicited from the Department of Defense, Department of the Treasury, Department of State, Department of Transportation, Department of Energy, Department of the Interior, Fish and Wildlife Service, National Park Service, Minerals Management Service, Environmental Protection Agency, Federal Energy Regulatory Commission, National Marine Fisheries Service, Army Corps of Engineers and the Coastal Guard.

15, 1991.[14] The administrative record of the appeal was reopened on April 29, 1992, to accept a report from the Environmental Sciences Review Panel (ESRP),[15] entitled *Report to the Secretary of the Interior from the North Carolina Environmental Sciences Review Panel as Mandated by the Oil Pollution Act of 1990*, January 22, 1990 (ESRP Report). Finally, Mobil and the State were provided an opportunity to file responses to any issues raised by the ESRP Report.

Although all materials received have been included in the record, I have considered them only as they are within my scope of review. I will now examine threshold issues raised in the appeal prior to my determination of whether the grounds for a Secretarial override have been satisfied.[16]

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[14] Mobil's Final Statement in Support of a Secretarial Override, August 14, 1991 (Mobil's Final Brief); North Carolina's Response to the Secretary's Final Briefing Request, August 14, 1991 (State's Final Brief).

[15] The ESRP was created under § 6003 of the Oil Pollution Act of 1990, 33 U.S.C. § 2753, to assess whether the available physical oceanographic, ecological and socioeconomic information relating to the North Carolina OCS was adequate to enable the Secretary of the Interior to carry out his responsibilities under the Outer Continental Shelf Lands Act. The Deputy Under Secretary determined that while the purpose of the ESRP report differs from the purpose of this appeal, its findings may be relevant to the issues raised in this appeal. Letters from Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, to William C. Whittemore, Senior Counsel, Mobil, and Roger N. Schecter, Director, North Carolina Division of Coastal Management, May 23, 1991.

[16] Both Mobil and the State have raised the issue of bias. Mobil asserts that the State's consistency position is tainted. *See* Mobil's Initial Brief at 8-10. The State asserts that the MMS has an energy production bias. *See* State's Initial Brief at 58, State's Final Brief at 6. I will accord, however, what I determine to be the appropriate weight to comments received in this appeal.

III. THRESHOLD ISSUES

A. *Compliance with the CZMA and Its Regulations*

Commerce regulations at 15 C.F.R. Part 930, Subpart E—"Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities" set forth the rules which specifically govern the review of OCS activities by state reviewing agencies for consistency with state-approved coastal management programs pursuant to the CZMA. These regulations incorporate by reference general consistency review requirements found in other subparts of 15 C.F.R. Part 930.

Mobil argues that the State's objection fails to comply with the requirements of 15 C.F.R. §§ 930.64(d) and 930.79(c). 15 C.F.R. § 930.79(c) incorporates by reference the general requirements of § 930.64(d) and specifically provides that a state may object to Federal license or permit activities described in detail in an applicant's POE based on the applicant's failure to provide information defined in the regulations, if the State submits to the applicant a written request which describes the nature of the information requested and the necessity of having this information for making a consistency determination. Mobil contends that it supplied all the necessary information for the State to perform its consistency review, and that the State never requested from Mobil in writing the particular POE information which the State now requests on appeal in violation of the procedural requirements of 15 C.F.R. § 930.64(d) and § 930.79(c). *See* Mobil's Initial Brief at 4.

The record of this appeal indicates, however, that the State did request from Mobil specific information regarding the drilling operation which the State deemed necessary to make a consistency determination. *See* State Ob-

jection Letter and correspondence cited therein. The State's requests for a four-part fisheries study from Mobil were made in writing to Mobil, and in fact, are the basis for the State's prior objection to Mobil's proposed drilling discharge activities which are a part of its overall exploration efforts at the Manteo site. *Id.* Moreover, Mobil has been well aware of the State's fisheries concerns even before the State objected to its POE consistency certification. Based on the State's informational concerns on the four-part fisheries study, alone, I find that the State has complied with the requirement of 15 C.F.R. § 930.64(d) that it make its concerns known to Mobil. After examining the State's objection, I have therefore determined that the State has complied with the requirements of the CZMA and its implementing regulations for properly lodging an objection.[17] *See* CZMA § 307(c)(3)(B); 15 C.F.R. §§ 930.64(a), (d); 930.79(c).

B. *Request for a Dismissal*

The State has requested that I dismiss Mobil's Ground I claims for good cause. *See* 15 C.F.R. § 930.128. The State argues: "Good cause exists in that [Mobil] has failed to provide the Secretary with the data and information necessary to allow him to make reasonable decisions for *all* of the elements and issues raised under Ground I." State's Initial Brief at viii-ix (emphasis in original, footnotes omitted). The regulations at 15 C.F.R. § 930.128 provide a non-inclusive list of good causes that are grounds for dismissal. Based upon a review of the record of this appeal, I decline to dismiss Mobil's Ground I claims for good cause. As I will discuss in the section on

[17] *See* Decision and Findings in the Consistency Appeal of Shickrey Anton, (Anton Decision), May 21, 1991, at 3; Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Decision), October 29, 1990, at 5.

burden of proof, in this case if I determine that there is insufficient data and information in the record for me to make the findings necessary for an override, rather than dismiss part of the appeal as the State has requested, I will issue a decision which will reflect my inability to make these findings.

C. *Adequacy of Information*

The parties have raised an issue as to the adequacy of information in this appeal. As stated above, the State argues that Mobil has failed to provide the necessary information and data for me to decide the elements of Ground I. State's Initial Brief at viii-ix. On the other hand, Mobil asserts that there is adequate information on the effects of the proposed POE, and that any effects are minor. *See* Mobil's Initial Brief at 15-16, 20, 29, 36.

Aside from the requirements imposed on the State for properly lodging an objection, the Appellant bears the burden of proof and the burden of persuasion. *See* Anton Decision at 4; Chevron Decision at 4-5. As stated in the Anton Decision:

> The regulations provide that the Secretary shall find that a proposed activity satisfies either of the two statutory grounds "when the information submitted *supports* this conclusion." 15 C.F.R. § 930.130(a) (emphasis added). Thus, without sufficient evidence the Secretary will decide in favor of the State.

Anton Decision at 4 (emphasis in original). Therefore, for me to find for Mobil I must make the findings specified in the regulations at 15 C.F.R. §§ 930.121 or 930.122. An absence of adequate information in the record inures to the State's benefit because such an ab-

sence would prevent me from making the required findings.[18]

I will make my decision based on the evidence in the record before me. The record contains much non-site-specific information as well as information collected for other purposes, raising the issue of the predictive value of this information as applied to this case. *C.f.* National Research Council, "Drilling Discharges in the Marine Environment" (1983) (NRC 1983 Report) at 6. I note this statement of the National Research Council (NRC):

> Marine ecosystems on the OCS clearly vary in their sensitivities to anthropogenic stress, and caution is therefore advisable in extrapolating observations from one region to another. On the other hand, to dismiss all research results not obtained directly from the environment analyzed may amount to ignoring valuable data.

NRC 1983 Report at 137. In evaluating the information in the record, I will necessarily determine the adequacy of the information for determining whether Mobil has satisfied the two grounds for a Secretarial override,[19]

[18] The State objection in the Decision and Findings in the Consistency Appeal of Long Island Lighting Company, (LILCO Decision), February 26, 1988, was based on lack of information. In that case, the Secretary found that the record contained sufficient information, in particular comments from Federal agencies, for him to make a finding that the Appellant's Project would have no adverse effects on the natural resources of the state's coastal zone. *See* LILCO Decision at 12-13.

[19] The Secretarial override process is a separate and independent decision-making function from the State's consistency review process. *See* Anton Decision at 3; Chevron Decision at 5. Since the State's consistency review and the Secretarial override process are based on different evaluative criteria, the adequacy of information for these two determinations may differ. In addition, the administrative records for these two determinations may differ.

recognizing that some information and conclusions contained in the record may not be directly applicable to the facts of this case. The two parameters for adequacy which I will use are completeness of information and scientific quality of information.

In its 1989 report, the NRC recognized that the quantity and types of ecological information needed generally varied with the stage of the overall project, with less site-specific needed for leasing decisions, more site-specific information needed for exploration decisions, and still more information needed for a decision to develop and produce hydrocarbon resources. *See* National Research Council, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" (1989) (NRC 1989 Report) at 42-43; Mobil's Final Brief at 26-27. Moreover, the NRC generally identified the information necessary for leasing, exploration, development and production decisions. *See* NRC 1989 Report at 43. I agree with the conclusions of the NRC on this point.[20] Therefore, I find that for me to adequately identify the impacts of the proposed project, the record should disclose, at a minimum, a characterization of the environment, an identification of the biological resources at risk, and an identification of basic ecological relationships. *See* NRC 1989 Report at 5.

The NRC provides further guidance, which I adopt in this case, as to the nature of the information necessary to make an informed decision. This necessary information would include (1) a characterization of major habitat types; (2) a catalog of representative species (or major species groups) present in the lease area; and (3) seasonal

[20] Mobil also agrees that the 1989 National Research Council Report provides important guidance. *See* Mobil's Initial Brief at 30.

patterns of distribuion and abundance. NRC 1989 Report at 43. Furthermore, in addition to this information which the NRC states is generally necessary to make an informed leasing decision, the record should generally disclose (1) basic ecological information (*e.g.*, habitat, feeding behavior and reproduction); (2) basic information on factors determining vulnerability of various species; and (3) information on the potential effects of various agents of impact. NRC 1989 Report at 43.

The adequacy of information will also depend on the likelihood [21] of an impact as well as on the potential extent or severity of an impact. *C.f.* Chevron Decision at 44; Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon SRU Decision), November 14, 1984, at 15; NRC 1989 Report at 54, 59-60. As stated by the NRC, where unique habitats or endangered and rare species exist, more extensive characterization of the sensitivity of biota to OCS activities, recovery rates, and identification of mitigating measures may be required before leasing. NRC 1989 Report at 43. Generally, less information is necessary where the likelihood or the extent of impacts may be low, and more information is necessary where the likelihood or the extent of impacts may be high.[22]

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21 The North Carolina Environmental Science Review Panel states:

> Risk assessment clearly and appropriately requires application of probability theory to permit proper evaluation of proposed OCS activities, but the use of probability in determining standards of completeness of environmental information gathering should be largely limited to exclusion of exceedingly improbable events from extensive evaluation.

ESRP Report at 81.

22 Since I have determined that the proposed drill site area contains unique habitats and endangered and rare species, there must be more extensive characterization of the sensitivity of biota to Mobil's OCS-related activities, because the possible extent of adverse impacts will be higher. *See* NRC 1989 Report at 5.

IV. GROUNDS FOR OVERRIDING A STATE OBJECTION

Pursuant to CZMA § 307(c)(3)(B) and 15 C.F.R. § 930.131, Federal licenses or permits required for activities described in detail in Mobil's POE may be granted despite the State's consistency objection if I find that each activity described in detail in Mobil's POE is (1) consistent with the objectives or purposes of the CZMA (Ground I), or (2) is necessary in the interest of national security (Ground II). *See also* 15 C.F.R. § 930.130(a). The Appellant has pleaded both grounds. The Department's regulations interpreting these two statutory grounds are found at 15 C.F.R. § 930.121 and § 930.122.

A. *Ground I: Consistent with the Objectives or Purposes of the CZMA*

The first statutory ground (Ground I) for overriding the State's objection to the proposed project is that the activity is consistent with the objectives or purposes of the CZMA. To make a finding on this ground I must determine that the proposed activity satisfies all four of the elements specified in 15 C.F.R. § 930.121.

1. *Element 1: Activity Furthers One or More Objectives of the CZMA*

To satisfy Element 1 of Ground I, I must find that the activity furthers one or more of the competing national objectives or purposes contained in the CZMA. 15 C.F.R. § 930.121(a). I find that the proposed project fosters one or more of the objectives of the CZMA, and therefore Element 1 is satisfied.

Congress has broadly defined the national interest in coastal zone management to include both the protection and development of coastal resources. Consequently, as stated in previous decisions, this Element normally will be satisfied on appeal. Decision and Findings in the Consistency Appeal of Amoco Production Company, (Amoco Decision), July 20, 1990, at 14.

OCS exploration, development and production activities are included within the objectives and purposes of the CZMA. *See, e.g.*, Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., (Korea Drilling Decision), January 19, 1989, at 7; Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989, at 5. The Department of Energy (DOE) states that the project lies in "one of the most promising natural gas prospects on the OCS." [23] The Department of the Interior (DOI) states that development of the Manteo Area Block 467 could benefit the natural gas market of the southeastern United States.[24] Based upon a review of the record, I find that Mobil's exploration for natural gas resources at this site furthers one or more of the competing national objectives or purposes contained in §§ 302 or 303 of the CZMA.

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[23] Letter from Robert H. Gentile, Assistant Secretary, Fossil Energy, Department of Energy, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, April 30, 1991, adopting Mr. Gentile's December 19, 1990, correspondence to Mr. Castle on Mobil's Manteo Block 467 NPDES appeal (DOE Comments).

[24] Letter from David C. O'Neal, Assistant Secretary, Land and Minerals Management, Department of the Interior, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, June 4, 1991 (DOI Comments).

2. *Element 2: The Activity's Individual and Cumulative Adverse Effects on the Coastal Zone are Outweighed by Its Contribution to the National Interest*

In order for the Appellant to meet this Element, I must find that the disputed activity, when performed separately or when its cumulative effects are considered, does not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest. 15 C.F.R. § 930.121(b). To perform the required balancing, I must first adequately identify the proposed project's adverse effects on the natural resources or land and water uses of the coastal zone and its contribution to the national interest. *See* Texaco Decision at 6. As stated above, if the information in the record is inadequate, such that I cannot adequately identify the adverse effects or the contribution to the national interest, I will be unable to perform the weighing, and therefore unable to find for Mobil on this Element. *See* Anton Decision at 5, n.8.

I conclude that the information in the record is insufficient for me to adequately identify the adverse coastal zone effects of the activity. Accordingly, I am unable to find for Mobil on Element 2 of Ground I.

a. *Adverse Effects on Coastal Resources and Uses*

In evaluating the adverse effects of the project on the resources of the coastal zone,[25] I must consider the ad-

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[25] The proposed exploration would occur about 39 miles from the State's coast, well outside of the State's coastal zone. Distance, alone, however, is not predictive of possible effects. The State's coastal resources are not confined to State waters, nor are potential effects confined to Federal waters.

verse effects of the project by itself and in combination with other past, present, or reasonably foreseeable activities affecting the coastal zone.[26] Other activities include accidents or improper conduct of an activity. *See* Chevron Decision at 24; Korea Drilling Decision at 10. In particular, I find that Mobil's proposed drilling discharge activities are reasonably foreseeable and will be relevant to my consideration of cumulative effects in this case.[27] I note, however, that since the consistency of NPDES permit activities is an issue distinct from the consistency of plan of exploration activities,[23] Mobil has filed a separate appeal to the State's objection to its proposed NPDES permit activities.

Probability of an Oil Spill During Exploration

Mobil asserts that the potential adverse impacts on the uses and natural resources of the coastal zone as a result of its proposed exploratory drilling must be evaluated based upon the risk of an accidental oil spill occurring during exploration. Mobil contends that the chance of an accidental oil spill occurring during exploratory drilling is extremely small and that in the event of such a spill Mobil's oil spill containment plan will adequately address the effects of a spill.

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[26] *See* Chevron Decision at 24; Texaco Decision at 6; Gulf Oil Decision at 8. Given that the probability of a hydrocarbon discovery is estimated by the MMS to be less than ten percent, I find that development and production of such reserves is not reasonably foreseeable. In this case I will consider the cumulative effects of activities occurring during the drilling period. *See* Texaco Decision at 24.

[27] *See* the accompanying decision in Mobil's NPDES permit appeal for a fuller discussion of Mobil's drilling discharge activities.

[28] *See* Texaco Decision at 4; Chevron Decision at 7; Korea Drilling Decision at 14.

In general the OCS drilling record supports Mobil's contention that the risk of an oil spill occurring as a result of a blow-out during exploratory drilling is low. MMS Environmental Assessment of Exploration Plan for Manteo Area Block 467 (EA), Exhibit F. The statistical record also indicates that an oil spill during exploratory drilling would most likely be the result of a rig-service-related event, and would involve diesel fuel and not crude oil. *See* Mobil's POE, vol. 3 at 2-1; FER at IV-13. Further, the geological data indicates that Mobil's proposed exploratory drilling operations will likely encounter natural gas, if any hydrocarbons are found. FER at III-5.

I have previously held that because some risk of a spill during oil and gas operations always exists, oil spill contingency plans are important. *See* Texaco Decision at 15. The MMS believes that Mobil's oil spill contingency plan meets or exceeds all MMS and Coast Guard guidelines. Letter from Bruce G. Weetman, Regional Director, Minerals Management Service, to Roger Eckert, Attorney-Adviser, NOAA, June 4, 1991 (MMS Comments) at 20. In particular, Mobil states that it will, among other things:

- position spill response and clean-up equipment at the drillship, at the Morehead City shore base and in the Oregon Inlet area;
- operate blowout preventer systems in compliance with MMS requirements;
- minimize operational spills of diesel fuel at the drill site or support vessel refueling docks by strict adherence to MMS and Coast Guard regulations; and
- assure full response capability, including minimum response times, to address any spill emergency.

See Mobil's Initial Brief at 44, 52-53. The MMS would also place additional restrictions on Mobil's proposed exploration of Block 467. *See* MMS Comments at 13-15.

The ESRP concluded that available information on the physical oceanography of the area is generally adequate to estimate encounter probabilities for spills that may occur during the exploration/delineation phase. ESRP Report at 28. The ESRP based this conclusion, however, on the "assumptions that an oil spill during this phase will likely occur only at the drill site platform and that the errors for the [MMS Oil Spill Risk Assessment] calculation (as performed for the Manteo site) are well enough understood to make these estimates." *Id.* The ESRP then discussed site-specific informational deficiencies relevant to the oil spill predictions. *Id.* The ESRP also concluded that information is adequate for estimating the risks involved in a service vessel accident either at the drill site or near the coast. *Id.*

Given that I found the probability of an oil spill to be low, and recognizing the elements of Mobil's oil spill contingency plan as well as the conclusions of the ESRP, I now find that the information in the administrative record on potential impacts of an oil spill is adequate for the purposes of this appeal. I also find that the predictive value of models relied upon by Mobil to predict the movement of spills in order to direct the scope and focus of its response efforts, is adequate.

Effects on Biological Resources

In this section I will examine the risk of individual and cumulative adverse effects from the proposed activity on the affected biological resources and uses of those resources.[29]

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[29] The State has asserted that Mobil has underestimated the biological importance of The Point. NMFS has characterized the natural resources found in Block 467 as unique. Letter from Andreas Mager, Jr., Assistant Regional Director, Habitat Conservation Division, National Marine Fisheries Service, to Minerals

Fish Resources:

One of the East Coast's most important commercial and recreational fisheries is located in the waters overlying the proposed drill site.[30] FER at III-83. The proposed drill site area serves as an important migratory pathway and feeding habitat for pelagic fishes. Yellowfin, bluefin, blackfin, and bigeye tuna, white and blue marlin, sailfish, swordfish, wahoo, and dolphin are caught there by North Carolina fishermen.[31] In addition, many target and prey species are believed to spawn near the western boundary of the Gulf Stream. Thus, the proposed drill site, even though it is located outside of the State's coastal zone, is situated such that an important food source for North Carolinians would be exposed to Mobil's proposed wastes.[32] Mobil states that the species composition found at the

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Management Service, Department of the Interior, December 13, 1989 (NMFS Letter). NMFS also states that the biological significance and later potential for adverse impacts is severely underestimated. *Id.* In general, the ESRP has stated that there needs to be a study of the ecological relationship between The Point's unusual biological resources and its physical properties. *See* ESRP Report at 36-37, 47.

[30] The first portion of the State's proposed study is an investigation of larval and juvenile abundance and distribution in the vicinity of the Mobil project.

[31] The Secretary's Exxon SRU Decision at 7-10 interpreted Element 2 to include adverse effects on coastal uses. In that case, Exxon's proposed OCS POE affected a thresher shark fishery important to California fishermen.

[32] In addition to citing coastal uses of The Point, the State argues that the area serves as spawning habitat for species that are important to North Carolina fisheries, including both prey and target species (menhaden, spot, croaker and flounder) that migrate into North Carolina's coastal waters. Memorandum from Bill Hogarth, Director, North Carolina Division of Marine Fisheries, to Roger Schecter, Director, North Carolina Division of Coastal Management, May 21, 1990, at 2, Attachment 6 to State Objection Letter.

drill site area is representative of the overall areal population, and that the species found were generally similar to those observed in previous collections conducted during the spring and fall months off the South Atlantic Bight and in the eastern Gulf of Mexico. *See* Mobil's Final Brief at 32-33. Upon reviewing the record, I find that while the species composition may not be unique, there is an unsual abundance of fish resources found near the drill site area, and that the area serves as an important migratory pathway, feeding habitat and spawning ground for several commercially significant species.

As to the possible effects on fishery resources, MMS states:

> [I]mpacts on fish resources may result from the effects of [the] discharge of muds and cuttings [and] treated sanitary and domestic waste. . . . Individuals may be subject to sublethal effects *before* dispersion and dilution of drilling mud [and] other waste discharges.

FER at IV-216 (emphasis added). In essence, the fishery resources, upon which the State's commercial and recreational fishing industries depend, may be exposed to and potentially affected by Mobil's wastes, with individual fish possibly subjected to "sublethal effects." [33]

MMS concludes that the expected impacts of the proposed discharges on commercial and recreational fishing would be low-level and temporary in nature. MMS NPDES Comments at 21. The record lacks information, however, on the marketability of fish which may have been exposed to Mobil's wastes and subjected to sublethal effects.[34]

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[33] *See* FER at IV-213 - 219 for a discussion of potential effects on the State's fisheries resources.

[34] *See infra* at 27 for a discussion of other potential socioeconomic effects.

MMS also concludes that under its "worst case" analysis of maximum level of impacts on fish resources, the anticipated effects would be minor and indistinguishable from natural background variability. The worst case analysis, however, has limited usefulness to my analysis for four reasons. First, as stated above, resources may be affected by Mobil's wastes *before* dispersion. Second, the analysis does not fully examine ecological effects. Third, the conclusions on natural variability may be flawed.[35] Fourth, the analysis does not fully account for cumulative impacts.

In commenting on this appeal, the National Marine Fisheries Service (NMFS) identified informational concerns regarding fisheries studies and stated that additional studies and information were needed. NMFS Comments. In comments on the DOI's Draft Environmental Report (DER)[36] on Proposed Exploratory Drilling offshore North Carolina, NMFS stated:

> The DER does not adequately address fishery issues. Discussions on effects of spills or accidents on eggs, larvae, and food organisms; recreational and commercial fishing activities; potential alterations of migratory patterns of important pelagic fishes; occurrence of latent fisheries resources; habitats; and fisheries operations in the project area are inadequate.

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[35] The ESRP states that the DOI decision documents are flawed in their discussion of the significance of natural variability. *See* ESRP Report at 45-46. The ESRP states:

> Purging from the decision documents the unjustified argument that variable ecological resources and variable driving forces do not deserve the same level of protection from environmental impacts as more invariant parameters is needed to render the interpretations and conclusions adequately defensible.

ESRP Report at 46.

[36] Given that NMPS' comments on this appeal were forwarded after the completion of the FER, one inference that can be drawn is that its prior concerns with the DER remain unresolved.

NMFS Letter. NMFS states that "many of the finfish that inhabit the site as eggs and larvae are not discussed. More information on distribution, life history aspects, and fisheries should be provided on tunas, dolphin, wahoo, and marlins." *Id.* The NMFS comments continue:

> The uniqueness of the Cape Hatteras area as a faunal mixing zone is not adequately addressed. The drill site is located near [an area] known for its value to migrating pelagic fishes. The area also is a critical feed site for tunas.

Id. NMFS also states that the "[e]cology, life history, and habitat requirements of epipelagic fishes are not well known. Accordingly there is insufficient basis for most of the assumptions made in the DER regarding potential impacts." *Id.*

Likewise, the South Atlantic Fishery Management Council informed NOAA that it agrees that there is a lack of adequate, site-specific biological and oceanographic data and information and acceptable analysis of existing information to proceed with exploratory drilling. Letter from Roy O. Williams, Chairman, South Atlantic Fishery Management Council, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, May 13, 1991.

Upon reviewing the information in the record of this appeal, I find that I am unable to adequately assess the risk of adverse impacts to fish resources. Consequently, I am unable to adequately identify the adverse effects on fish resources. While I previously found that Mobil's studies adequately predict a rapid dispersion of wastes near the surface, I was unable to find that Mobil's wastes will have a low toxicity. Furthermore, the State's fisheries may be subjected to sublethal effects *before* dispersion and

dilution of Mobil's wastes. Finally, I find that the fish resources at the proposed drill site are sufficiently rich, and their ecology sufficiently important, to require additional site-specific information.

Benthic Communities:

Benthic communities include, among other things, both infaunal and epifaunal organisms. Densities of infauna and epifauna near the Mobil drill site have been found to be unusually high.[37] The North Carolina Division of Marine Fisheries has stated that Block 467 has the highest benthic infauna population of any deep water site on the east coast. The State argues:

> The benthic assemblages found near the drill site are unique on the western North Atlantic slope. While species diversity is low, the benthic infauna exhibit extremely high biomass and species abundances. . . . The concentrations of demersal fishes are larger than usual for this water depth.

Summary and Assessment of Ad Hoc Live Bottom Committee (State NPDES Exhibit 23) at 4. Commercially harvested demersal fishes prey on infaunal organisms.[38] *See* FER at III-82, III-101-104, 180-183. Upon reviewing the record, I find that the benthic community near the drill site is unusual for its high biomass and productivity.

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[37] The third portion of the State's proposed four-part fisheries study is to measure the effects of drilling waste deposition on bottom organisms.

[38] Mobil's sweeping statement in its Initial Brief that "there is absolutely no indication that any coastal fishes or other coastal wildlife resources utilize the benthic habitat, benthic food sources, or benthic-derived energy in any form" is belied by statements in the FER and the EA. *Compare* Mobil's Initial Brief at 45 *with* FER at III-82, III-101-104, 180-183.

Moreover, I find that benthic communities are directly linked to the food web supporting the State's fisheries.

Potential damage to benthic and infaunal communities may be physical and or chemical.[39] NRC 1983 Report at 5. Factors influencing damage to benthic communities include the type and quantity of drilling discharges, the hydrographic conditions at the time of discharge, and the height above the bottom of the discharges. FER at IV-61. The effects also depend on how quickly the benthic community recovers, not only in total density and biomass, but also in the composition and structure of the community. NRC 1983 Report at 135. Benthic communities may also be damaged from the placing and removal of drillship mooring anchors. *See* MMS NPDES Comments at 37-38.

I will evaluate the benthic impact of Mobil's discharges as well as the emplacement and removal of drillship mooring anchors on the benthic environment. Mobil's drilling plans include both near-surface and seafloor discharges. Based upon a review of the information in the administrative record, I find that there is a low likelihood that the near-surface discharges will have a measurable adverse impact on benthic communities given the water depth and the current movements. Mobil's drilling plans, however, also include seafloor discharges and anchor placement. Mobil has performed simulation modeling of the deposition of seafloor discharges, for which I found in the decision for Mobil's NPDES appeal at this site that

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[39] Upon reviewing existing information on the fates and effects of drilling fluids and cuttings on the OCS, the NRC states that "[t]he postdepositional fates of drilling fluids and the recovery of altered communities are the processes for which data are most limited and predictions most tenuous." NRC 1983 Report at 136. The NRC advises caution in extrapolating observations of adverse effects from one region to another. *See Id.* at 137.

the seafloor discharges will be distributed in the immediate vicinity of the drill site.

MMS comments that the only expected negative effects of the proposed discharges would be from the deposition of drilling muds and cuttings directly on the seafloor during the drilling of the initial portion of the well. MMS NPDES Comments at 17. In its FER, MMS states that the major effect of the release of drilling muds and cuttings directly to the seafloor will be to bury and kill local benthic organisms. *See* FER at IV-211; Appendix E of the EA at E-4. Upon reviewing the record, I find that the major short term effect of the deposition of seafloor drilling discharges will be to bury and kill benthic organisms in the immediate vicinity of the drill site. I also find, however, that possible sublethal impacts include altered burrowing behavior, chemosensory responses, alterations in embryological or larval development, depressed feeding, decreased food assimilation and growth efficiency, and altered respiration and nitrogen excretion rates.[40] Thus, I find that in the immediate vicinity of Mobil's drill site, Mobil's proposed wastes may either destroy or poison a food source for part of the State's demersal fishery resources.[41]

As to the period of the diminishment in value of these natural resources, since I am unable to conclude that the

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[40] *See* Bowler and Petrazzuolo, *Draft Ocean Discharge Criteria Evaluation, NPDES Permit No. NC0052523*, (January 29, 1990) (Mobil NPDES Exhibit 27), at 10-6. Mobil refers to this report in its Final Brief at 23, n.18.

[41] In discussing the effects of Mobil's proposed wastes on benthic communities, Mobil discounts the effects on the food supply by stating: "The primary drilling fluid to be discharged at the sea floor is simply prehydrated bentonite clay (see Appendix I-1). Bentonite clay is a naturally-occurring material that is used in cosmetics and as a food additive." Mobil's POE, vol. 1 at B17-21.

benthic community would be accustomed to burial of the magnitude envisioned in the modeling studies, I decline to accept Mobil's argument that the area will become rapidly repopulated. Rather, as indicated in the FER, I find that recovery of these deep set fauna could take several years and the recolonizing community may be significantly different from the pre-drilling one.[42] FER at IV-212.

MMS has also stated that the emplacement and removal of drillship mooring anchors will cause localized destruction of benthic organisms. MMS NPDES Comments at 38. I agree with MMS' conclusion, however, upon review of the record, I find that the possible extent of this damage should be minimal.

Finally, NMFS and the ESRP have raised informational concerns on the possible impacts of Mobil's proposed waste discharges on the ecology of the benthic community. NMFS comments that the relationship between the high benthic infauna population and the proposed action should be addressed. *See* NMFS Letter. The ESRP states that a survey of the seafloor in the vicinity of the Manteo Unit should be completed prior to initiation of exploratory drilling, and that "the limited knowledge of the geographical extent of the unusual benthic community around the Manteo drill site is inadequate to describe what fraction of this system would be at risk during deposition of muds and cuttings." ESRP Report at 39. The ESRP states that this benthic survey should identify the geographic extent and degree of uniqueness of the unusual benthic community. ESRP Report at 45. I agree with NMFS and the

[42] The ESRP has indicated that the question of the recovery rate of the benthic community from the effects of Mobil's proposed wastes is unanswered. *See* ESRP Report at 48-49. The NRC states that recovery rates from complete annihilation can be many years on the continental slope. NRC 1983 Report at 136.

ESRP. I find that while the record identifies certain adverse effects, I am unable to adequately assess other ecological impacts of Mobil's proposed action on the benthic communities.

In summary, I found that the benthic communities are directly linked to the food web supporting the State's fisheries. While I found that the effects of Mobil's near surface discharges on the benthic environment will be minimal, I found that Mobil's seafloor discharges are likely to damage or destroy benthic communities in the immediate vicinity of Mobil's proposed drill site. I also found that the recovery period for this richly populated area could be several years. Finally, I found that there is presently inadequate information for me to adequately assess other ecological impacts on the benthic communities.

Plankton and Near Surface Resources:

The near surface environment includes a *Sargassum* community as well as planktonic and nektonic organisms.[43] The *Sargassum* communities provide habitat, food and protection to juvenile finfish and endangered sea turtles, and are closely connected to the State's fisheries. Tuna and dolphin feed on juvenile fish, crabs, and shrimp which occur in the *Sargassum* community.[44] Phytoplankton and zooplankton constitute a major portion of the food base

[43] *See* FER III-65 - III-70 for a summary of information collected on the *Sargassum* community known to occur in the area of the proposed activity. The second part of the State's proposed four-part fisheries study is to gather additional information centered on the *Sargassum* community. The State has designed the study to investigate the abundance and size of *Sargassum* rafts near Block 467 and summarize information on the *Sargassum* community as a source of food for various fish species.

[44] Mobil's Final Ocean Discharge Criteria Evaluation Report (Mobil NPDES Exhibit 19), December 8, 1989, at 36. Mobil refers to this exhibit in its Final Brief at 31.

for pelagic food webs.[45] In addition, most fish have planktonic eggs and larvae. Mobil NPDES Exhibit 19 at 28.

Mobil claims that any impacts on *Sargassum* communities and other near surface resources will be negligible. *See* Mobil's Initial Brief at 45-48. Mobil claims that due to the rapid dispersion of the discharges and the naturally short regeneration times of planktonic species, there will be minimal short term impacts. Mobil's Initial Brief at 48-49

Plankton and near surface organisms could be affected by Mobil's drilling discharges and hydrocarbon releases. *See* Mobil's Initial Brief, Attachment One; FER at IV-207. If plankton come in contact with drilling discharges, the photosynthetic production of phytoplankton could be reduced due to increased turbidity of the water; filter feeding and respiratory functions could be harmed by contact with particulates; and there may be lethal or sublethal effects. *Id.* These effects would vary depending on the currents. The FER concludes, however, that:

> While it is not known with certainty whether the availability of phytoplankton as a food source for zooplankton grazers eventually affects the abundance or productivity of major fisheries, drilling discharges are not expected to result in measurable impacts on populations of phytoplankton or on the marine food web.

FER at IV-207; *see also* EA at 51. MMS also states that its "worst case" analysis looked at the possibility of the proposed discharges contacting the "sensitive" *Sargassum*

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45 Bowler and Petrazzuolo, *Draft Ocean Discharge Criteria Evaluation, NPDES Permit No. NC0052523*, January 29, 1990. (Mobil NPDES Exhibit 27), at 6-1. Mobil refers to this exhibit in its Final Brief at 23, n.18.

communities. MMS NPDES Comments at 51. MMS concluded that there would be no anticipated measurable effects on the *Sargassum* or associated organisms, including fish, species fed on by fish, and marine turtles. MMS NPDES Comments at 51. MMS also states that any effects on fish eggs and larvae would be minimized due to the proposed shunting of the discharges 25 feet below the sea surface. MMS NPDES Comments at 20.

In addition to expressing the view that there is inadequate information on the ecology of the drill site, NMFS states that "the DER fails to address adequately the concentration of marine fauna along thermal and salinity fronts and the potential consequence of oil spills and other toxic releases along these fronts." NMFS Letter.

The ESRP states that ecological information on the functioning of the *Sargassum* community is inadequate. *See* ESRP Report at 35-38. In addition, the ESRP states that what is needed is an "enhanced understanding of the processes that control the function and production of this *Sargassum* system." ESRP Report at 38.

Based upon a review of the information contained in the record, I find that for the purposes of this appeal, there is inadequate information on the effects of the proposed activity on near-surface and planktonic resources. While I accept the conclusions that the near surface discharges will be rapidly dispersed, given the potential ecological importance of the *Sargassum* community to the State's fisheries, and the presence of sensitive larval forms of the State's fisheries, I find that the potential for significant impacts is great enough to merit further study before an informed decision can be made.

Marine Mammals:

There are several species of cetaceans and pinnipeds which can be found in the waters off North Carolina, and which

can be grouped into regularly occurring species, migratory species, and rare or unknown-occurrence species.[46] *See* Mobil NPDES Exhibit 27 at 6-24. As with many of the State's coastal resources, the range of marine mammals may include both State and Federal waters. Several species are endangered or threatened or recognized as species of undetermined status by the State and intrascientific community. Mobil NPDES Exhibit 27 at 6-25. The record contains biological summaries for species of marine mammals that frequent this area. *See* FER at III-192–III-222.

The following possible adverse effects have been disclosed in the record. Underwater noise generated by drilling activities could affect cetaceans. FER at IV-220, 225. Vessel and aircraft traffic could produce startle reactions in cetaceans. FER at IV-222. Certain wastes may produce sublethal effects on cetaceans. *See* FER at IV-223-224. Turbidity could affect the sight and echolocation capabilities of some marine mammals if they swim within the discharge plume. Prey species of cetaceans could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64. The FER also points out, however, that only predators in a weakened physical state would experience any effects if they were unable to move to a nearby area where prey is obtainable. FER at IV-64.

In spite of the evidence suggesting possible harassment of, and injury to, marine mammals, Federal agencies offered few other comments on the proposed project's effects on marine mammals. In particular, NMFS, the Federal

[46] In its NPDES objection letter (included as an attachment to the State's POE objection letter) the State indicated that it wanted information on use of the site by marine mammals, specifically idenifying numbers of individuals, numbers of species, and activities by species at the site.

agency with jurisdiction over certain marine mammals, provided few specific comments on the need for information on marine mammals. MMS concluded that the level of impacts on marine mammals is considered to be very low. FER at IV-224, 227.

After reviewing the information in the record on the effects of the proposed project on marine mammals, I find that the information is sufficient for the purposes of this appeal and that the individual and cumulative effects of the proposed project will be minimal. In assessing the risk of possible injury to the endangered and threatened marine mammal population, I note that while the extent of the harm could be high to the marine mammals' diminished numbers, the likelihood of damage will be low due to the rapid dilution of near-surface wastes and the temporary nature of the drilling activity. I find that any harassment of marine mammals is likely to be temporary. In making these findings I note that NMFS has expressed few specific concerns as to the effects of the proposed project on marine mammals.

Sea Turtles:

Five species of endangered or threatened sea turtles are found within the coastal and offshore marine habitats of North Carolina.[47] *See* FER at III-222-237. The endangered species are the Kemp's ridley (*Lepidochelys kempi*), hawksbill (*Eretomochelys imbricata*), and leatherback turtle (*Dermochelys coriacea*). The green turtle (*Chelonia mydas*) and loggerhead turtle (*Caretta caretta*) are classified as threatened. FER at III-222.

[47] In its NPDES objection letter (included as an attachment to the State's POE objection letter) the State indicated that it wanted information on use of the site by sea turtles. Specifically, the State wants information on numbers of individuals, numbers of species, and activities by species at the site.

Potential impacts to sea turtles include underwater noises, vessel and aircraft traffic, drilling discharges and hydrocarbon releases. *See* FER at IV-229-231. Juvenile green and loggerhead turtles, and possibly those of other species, could be exposed to Mobil's wastes. *See* EA at E-8. In addition, prey species of sea turtles could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64.

Mobil argues, however, that the proposed activity is expected to have few impacts on turtles in the area. Mobil states that the drilling would not alter natural currents and would not disrupt the *Sargassum* mats which provide habitat to juvenile turtles.[48] Mobil states that sea turtles can easily avoid ships and that the turtles will be protected by NPDES permit conditions, including subsurface shunting of discharges. *Id.*

MMS states that due to the primarily inshore distribution of marine turtles during the proposed drilling period, the impacts of the proposed project are likely to be minimal. *See* FER at IV-231. Planktonic prey species such as jellyfish are unlikely to be displaced by the discharges. FER at IV-230. A temporary increase in water turbidity could, however, affect a turtle's ability to detect prey. *Id.* MMS based its conclusions principally on the limited areal extent and duration of the discharge plume. *See* EA at E-8.

Other Federal agencies offered few other comments on the proposed project's effects on sea turtles. In particular, NMFS, the Federal agency with jurisdiction over endan-

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[48] Mobil's Comments and Responses to Issues of Concern for Draft NPDES Permit for Manteo Block 467 Exploratory Well Discharges (Mobil NPDES Exhibit 18), May 1990, at 51. Mobil refers to this exhibit in its Final Brief at 31.

gered sea turtles, provided few specific comments on the need for information on sea turtles.

The ESRP concludes that the ecological information on the *Sargassum* community as habitat for juvenile sea turtles is inadequate for all phases of oil and gas resource exploitation. *See* ESRP Report at 8, 37, 48. The ESRP states that "knowledge of the spatial and temporal abundance of hatchling sea turtles in the *Sargassum* community of the western wall of the Gulf Stream is inadequate to evaluate the risks of oil and gas activities on these endangered and threatened species." ESRP Report at 37.

After reviewing the information in the record on the effects of the proposed project on sea turtles, however, I find that the information is sufficient for the purposes of this appeal and that the individual and cumulative effects of the proposed project will be minimal. In assessing the risk of possible damage to the endangered and threatened sea turtle population, I note that while the extent of the harm could be high to the turtles' diminished numbers, the likelihood of damage will be low because of the rapid dispersal of near surface discharges and the primarily inshore distribution of sea turtles during the drilling period. In making these findings I also note that NMFS has expressed no specific concerns as to the effects of the proposed project on endangered or threatened sea turtles.

Birds:

The Manteo area is used as a feeding ground by many resident and migratory species of seabirds which also frequent the State's coastal zone. The waters along the western edge of the Gulf Stream off Cape Hatteras are an important feeding area for several species. MMS indicates that the birds identified in the FER constitute an important ecological, economic, and aesthetic resource within North Carolina's coastal zone. *See* FER III-238.

Some of the species are either endangered or threatened. The cahow (endangered) may be found on the North Carolina OCS. Mobil NPDES Exhibit 27 at 6-28. Coastal endangered and threatened species that may be present in the project area include the peregrine falcon (endangered), bald eagle (endangered), piping plover (threatened), and the roseate tern (threatened). Mobil NPDES Exhibit 27 at 6-28.

The Fish and Wildlife Service (FWS) has stated that it is concerned about the potential indirect impacts of exploratory drilling on seabirds. Memorandum from Regional Director, FWS, Atlanta, to MMS Regional Director, Atlantic OCS Region, December 22, 1989, (Attachment Four to Mobil NPDES Exhibit 18). Of particular concern to the FWS is that the only known concentration of the rare black-capped petrel (*Pterodroma hasitata*) at sea occurs specifically in and around the drilling site, with numbers peaking in May, August, and late December through early January. *Id.* The FWS also stated that black-capped petrel specimens have had high levels of mercury relative to other seabird species collected within the lease sale area. *Id.* The FWS recommended the establishment of a monitoring program.

In its FER, MMS identified the following possible adverse effects on birds. Birds could experience startle reactions from aircraft noise and vessel traffic. FER at IV-233. Specifically, since the bald eagle and piping plover are known to nest during the period proposed for exploration, aircraft noise between the drill site and the Michael J. Smith Field in Beaufort could cause adults to abandon the nest. FER at IV-234. MMS concluded, however, that this possible effect is unlikely given that, on the average, there will only be two aircraft flights per day. *Id.* MMS also states that there is no evidence that the helicopter flights will impinge on critical feeding areas.

Id. As to possible effects from drilling muds and cuttings, MMS concluded that direct contact with, or contamination by, muds and cuttings are not considered likely for the Bermuda petrel, roseate tern, or other endangered species. *Id.* However, prey species of marine birds could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64.

Based on the evidence in the record, I find that for the purposes of this appeal there is adequate information on the possible effects of Mobil's proposed activity on birds, an important ecological, economic, and aesthetic resource within North Carolina's coastal zone. In considering the risk of potential impacts upon birds, I find that the individual and cumulative impacts of Mobil's proposed activity on birds will be minimal. In particular, I note that while the impacts on endangered or threatened species could be great given their diminished numbers, the likelihood of impacts will be small given the nature and duration of possible impacts.

Air Quality

Activities associated with Mobil's proposed exploration of Manteo Area Block 467 will emit air pollutants. *See* FER at IV-205. Upon reviewing the information in the record, however, I find that the information is adequate for me to conclude that there will not be any significant impacts (including cumulative impacts) on the State's air quality.

Water Quality

Mobil's proposed drilling discharges will affect water quality near the drill site. Mobil asserts, however, that its discharges will have no impact on the water quality of the State's coastal zone. Mobil's Initial Brief at 49. In

its briefing for Mobil's NPDES permit appeal for the Manteo drill site the State disputed Mobil's claims on water quality. The State asserts in this appeal that Mobil's water quality study leaves many unanswered questions. State's Initial Brief at 67.

MMS states that the effect of drilling discharges on offshore water quality has been the subject of numerous field monitoring programs. MMS NPDES Comments at 13. MMS states that the expected effects of drilling effluent on water quality are short-term, minor, and that water quality parameters are anticipated to return to background concentrations within a few hundred meters of the point of discharge. MMS NPDES Comments at 15. MMS predicts that there will be no impact on water quality of the State's coastal zone. Other agencies offered few specific comments on the proposed project's effects on water quality.

Upon reviewing the information in the record, I find that the information is adequate for me to conclude that there will be no significant impacts on the State's water quality, given the location of the drill site and the dynamic current regime.

Socioeconomic Effects

Having previously considered the effects of the proposed POE on the resources of the coastal zone which in turn affect the coastal uses,[49] in this section I will focus on other possible adverse effects of the proposed POE on uses of the State's coastal zone.[50] Important economic

[49] Natural resource damage valuation is based in part on the value of the uses of those resources. *See, e.g.*, Oil Pollution Act § 1006(d), 16 U.S.C. § 1432(6).

[50] The MMS states that North Carolinians living in eastern North Carolina in general have "fewer job opportunities, greater unemployment, higher levels of dependency, and lower incomes than North Carolinians living elsewhere in the State." FER at III-297. I will consider these comments when assessing the extent to which Mobil's proposed project furthers the national interest in economic development.

activities in the State's coastal zone include agriculture, tourism, recreation, forestry, and commercial fishing. FER at III-313-315.

The primary coastal use at issue in this case is the commercial and recreational fishing industry.[51] The proposed exploration area contains important concentrations of epipelagic, bluewater fish and The Point is one of the most productive offshore fishing grounds along the east coast. *See* FER at III-83. Over the year, The Point is the most frequently and intensively fished area by the Oregon Inlet charter boats, private recreational and commercial bluewater fleet. The area's reputation for large blue marlin has prompted several local billfish tournaments. The fishing industry may be affected by space use conflicts, both from drillship activities and increased vessel traffic.[52] The drillship will be in place for approximately 114 days between May and October. This time period coincides with much of the fishing season. FER at IV-217. During this time period there could be as many as 100-125 boats engaged in fishing near The Point and the drill site.[53]

[51] The fourth part of the State's proposed study would be documentation of the commercial and recreational fishing in the vicinity of the drill site and The Point. This part of the study would be accomplished by surveying commercial and recreational fishermen on specific days upon returning to various ports in North Carolina. The information obtained, along with some field data, would be used to document the importance of the area as a fishery.

[52] *See also* discussion, *supra* at 16.

[53] Testimony of John Bayless, Oregon Inlet Sportfishing Guides Association (State NPDES Exhibit 26-A).

In commenting on this appeal, Federal agencies differed in their assessment of the potential effects on the fishing industry. MMS concludes that impacts on the fishing industry are expected to be low. FER at IV-219. MMS stated that interference from the placement of drillship anchors would be minimized by the placement of surface buoys and a notice to mariners. MMS NPDES Comments at 38. MMS also concluded in its FER that interference from support vessel traffic would be minimal. *See* FER at IV-242-243.

I agree that the space use impacts will be temporary in that they are scheduled to last for about 114 days. There is unrefuted evidence that the fishing industry seasonally concentrates near the drill site, however, indicating that there will be a high likelihood of impacts. I find, however, that the potential extent of those space use impacts will be minor given that Mobil plans to drill only one exploratory well. In evaluating the information in the record, I therefore find that the information is adequate for me to conclude that the space use impacts upon the fishing industry will be minor.

The ESRP concludes that, in general, socioeconomics is the most neglected area in the primary documents dealing with exploratory drilling at the Manteo site. *See* ESRP Report at 58. The ESRP made a number of general comments on the inadequacy of existing socioeconomic information. *See* ESRP Report at 59-60. Furthermore, the ESRP recommends that a base case characterization analysis, community studies, studies on aesthetic and perceptual issues, studies on infrastructure, and a socioeconomic monitoring study should be initiated as soon as possible, especially since these studies were not done at the leasing phase. *See* ESRP Report at 61-63.

Upon reviewing the information in the record of this appeal, I am unable to adequately identify the extent of the

individual and cumulative adverse socioeconomic effects resulting from Mobil's proposed POE. Given that this is a frontier area and an area of rich natural resources upon which the State heavily depends, socioeconomic impacts must be more fully addressed.

Conclusion on Adverse Effects

I have evaluated the information in the record on adverse effects of Mobil's proposed POE on the natural resources and uses of the State's coastal zone. I found that the exploration will have adverse effects on the resources and uses of the State's coastal zone. In particular, I found that the exploration will affect the benthic environment, which is linked to the State's fisheries. Moreover, based on a review of the record, I have identified informational concerns sufficient that I am unable to adequately assess the risk of impacts of Mobil's proposed POE, and so, I am unable to adequately identify the individual and cumulative adverse effects of Mobil's proposed POE.

I note that the NRC stated in its 1989 report that "[t]he basic information needed to make a leasing decision anywhere includes a characterization of the environment, identification of the biological resources at risk, and a basic understanding of ecological relationships." NRC 1989 Report at 5. Even at this post-leasing stage, I find that Mobil has not adequately documented the biological resources or ecological relationships at risk. While the overall likelihood of impacts may be low, to say that the models of a worst case scenario obviate the need to understand any ecological relationships between the State's fisheries and the *Sargassum* or benthic communities is too facile an explanation for me to accept, given that the potential extent of impacts may be high.

Furthermore, the 1989 NRC report indicates that where unique habitats and endangered and rare species exist,

more extensive characterization of the sensitivity of biota to OCS-related activities, characterization of recovery rates, and identification of mitigating measures is needed. NRC 1989 Report at 5. I am persuaded that the biological resources of the drill site area are sufficiently rich and unique to merit further investigation. I am also persuaded that the fisheries located at the site are an important part of the State's coastal zone, and that there may be potential risks of contamination of sensitive fish larvae. I find that Mobil has not adequately accounted for the effects of reasonably foreseeable effects resulting from increased currents or adverse weather conditions. I am persuaded that the ecological relationship of the benthic environment to the State's fisheries must be further assessed in order to adequately evaluate the risk of impact of Mobil's proposed activities. Finally, I find that Mobil has not adequately assessed the risk of its impacts on the socioeconomic uses of the State's coastal zone.

b. *Contribution to the National Interest*

The national interests to be balanced in Element 2 are limited to those recognized in or defined by the objectives or purposes of the CZMA. *See* Korea Drilling Decision at 16. Since our national interests are not static, however, the Secretary has noted that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by the Federal agencies. *See* Decision and Findings in the Consistency Appeal of Union Oil Company of California, (Union Decision), November 9, 1984, at 15. These sources of information can assist the Secretary in determining the current national interest in a proposed project.

I find that Mobil's proposed one-well OCS exploration would make a minor contribution to the national interest.

Energy self-sufficiency through oil and gas production is a recognized goal of the CZMA and the Secretary has previously held that it furthers the national interest under this Element. *See* Exxon SRU Decision at 11. Moreover, the record of this appeal indicates that energy self-sufficiency through natural gas production continues to be in the national interest.[54] Of those Federal agencies that commented on the issue of the national interest in the Appellant's proposed activity, most expressed support for domestic energy projects. The DOI states that "[a]n important discovery, such as the Manteo Prospect may represent, is an essential component in maintaining self-sufficiency in clean burning, environmentally safe natural gas." DOI Comments. In § 6003 of the Oil Pollution Act of 1990, however, Congress found that the Outer Banks is an area of "exceptional environmental fragility and beauty" and that there are concerns about the adequacy of the scientific and technical information underlying oil and gas exploration decisions in this area. *See* 33 U.S.C. § 2753(b). Based upon a review of the record, I find that there is a national interest in the *informed* exploration for natural gas resources at this site, such that potential risks have been fully evaluated.

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[54] A report on the national energy strategy states, however, that energy self-sufficiency is an unachievable goal, and that the only achievable national energy strategy goal is one of mitigation of economic damage potential arising from violent fluctuations in either the supply or price of oil. *See* National Energy Strategy—Executive Summary, (State Exhibit 63), February 1991, at 6. Mobil also discounts the policy of energy self-sufficiency by stating that "so long as normal trade relations exists, it hardly matters whether the import level [of oil] is 10 percent, 40 percent, or 60 percent." Advertisement entitled "Unnatural History" placed by Mobil in the *Wall Street Journal*, November 9, 1989, (State Exhibit 63).

In order to perform the required balancing for Element 2, I must also identify the *extent* of the national interest contribution of Mobil's one-well drilling proposal. In this case I will consider the potential size and likelihood of natural gas recovery as well as the degree to which the proposal is based on informed decision-making, such that potential risks have been fully evaluated.[55] As evidenced by comments from MMS and the DOI, exploration could result in the recovery of five trillion cubic feet of natural gas.[56] I find that there is a potential for a large discovery.[57] The State requests that I consider the lack of in-place infrastructure when taking into consideration the probability that natural gas can be recovered at the site. State's Final Brief at 16-17. Given that I have found that if natural gas is discovered it will probably be in a large amount, I find that the size of the discovery will outweigh the costs of bringing the natural gas to market. As to the likelihood of a natural gas discovery, in its comments on this appeal, MMS has stated:

> Without a discharge permit, even drilling a single exploratory well on the Manteo Prospect, with estimates of hydrocarbon resources as great as 1 billion barrels of oil equivalent in the form of 5 trillion cubic feet (tcf) of natural gas, would have to be questioned given that *the chance of encountering hydrocarbons is only 10 percent or less.* (Emphasis added.)

MMS NPDES Comments at 8. Accordingly, there is a 90 percent chance that no hydrocarbons will be found, a small likelihood of discovery.

Informed exploration is in the national interest, however, even if there is no discovery of hydrocarbons.[58] In this case, pursuant to § 6003 of the Oil Pollution Act in which Congress noted the importance of informed decision-making in this area, the ESRP concluded that adequate information is lacking for even an informed leasing decision, let alone an informed decision to explore. I therefore find that Mobil's drilling proposal contributes less to the national interest because it contains informational deficiencies as identified by the ESRP.

Above, I found that the potential size of the discovery is large. However, there is a 90 percent chance that no hydrocarbons will be discovered at the site and that Mobil's drilling proposal contributes less to the national interest because it contains informational deficiencies as identified by the ESRP. Based upon a review of the record, I find that Mobil's proposed one-well OCS exploration would make a minor contribution to the national interest.

c. *Balancing*

I have evaluated the information in the record on adverse effects of Mobil's proposed POE on the natural resources and uses of the State's coastal zone. I found that the

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[55] The parameters influencing contribution to the national interest will depend on the facts of each case.

[56] MMS geologists characterize the five trillion cubic feet estimate as optimistic. FER at II-6.

[57] While the estimated potential hydrocarbon reserve would be found under approximately 21 lease blocks, Mobil's POE covers only one well in one lease block. *See* Mobil's Initial Brief at 19; Mobil's POE, vol. 1 at A1-4, A1-9. The MMS states that production of five trillion cubic feet of natural gas would involve the drilling of approximately 103 wells. FER at IV-13.

[58] Whether or not gas will be discovered, the exploration itself furthers the national interest by ascertaining information on available hydrocarbon reserves. *See* Texaco Decision at 30-31; Amoco Decision at 45.

exploration will have adverse effects on the resources and uses of the State's coastal zone. In particular, I found that the exploration will affect the benthic environment, which is linked to the State's fisheries. Moreover, based on a review of the record, I have identified informational concerns sufficient that I am unable to adequately assess the risk of impacts of Mobil's proposed POE, and so, I am unable to adequately identify the individual and cumulative adverse effects of Mobil's proposed POE.

I have evaluated the information in the record on the contribution of the proposed activity to the national interest. I found that the proposed one-well exploration plan would make a minor contribution to the national interest.

Because I cannot adequately identify the extent of the individual and cumulative adverse effects of the proposed activity, I am unable to perform the required balancing of the adverse effects against the contribution to the national interest. Consequently, I cannot find that the national interest benefits of Mobil's proposed POE outweigh the proposed activity's adverse effects on the State's coastal resources and uses.

3. *Element 3: Activity Will Not Violate The Clean Water Act or the Clean Air Act*

To satisfy Element 3 of Ground I, I must find that "[t]he activity will not violate any of the requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended." 15 C.F.R. § 930.121(c). The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated into all State coastal programs approved under the CZMA § 307 (f). I conclude that the activity meets the requirements of the Clean Water Act and the Clean Air Act, and therefore satisfies Element 3 of Ground I.

a. *Clan Water Act*

Sections 301(a) and 402 of the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. §§ 1311(a) and 1342, provide that the discharge of pollutants is unlawful except in accordance with an NPDES permit issued by the EPA. Mobil submitted its application for an NPDES permit to the EPA on August 18, 1989.

It is important to note, here, that the scope of the appeal is identified by the scope of the activities described in detail in Mobil's POE, as well as their individual and cumulative effects on the uses and natural resources of the State's coastal zone. While Mobil's NPDES permit activity is not described in detail in its POE (and is the subject of another appeal to the Secretary of Commerce), the effects of that proposed activity are properly considered within the scope of this appeal as well.

EPA must prescribe appropriate terms and conditions in an NPDES permit for discharges associated with OCS activities. In its comments on this appeal, EPA repeated the comments it made in Mobil's NPDES permit appeal for the Manteo drill site:

> Compliance with all conditions of the NPDES permit, if consistency is resolved and the permit issued, would meet the requirements of the Clean Water Act applicable to point source discharges. Therefore, assuming that Mobil will not discharge until they have obtained a permit, the project will not be in violation of the Clean Water Act, as amended.

EPA Comments. EPA has confirmed in its comments in earlier override appeals that an OCS facility operated in compliance with an NPDES permit would satisfy the requirements of the CWA. *See, e.g.*, Korea Drilling

Decision at 10. Conversely, a project not operating in compliance with the terms of an NPDES permit would not meet the requirements of the CWA applicable to point source discharges.

In spite of Mobil's statements to the contrary,[59] Mobil cannot lawfully conduct its proposed activity without meeting the terms and conditions of an NPDES permit, thus meeting the standards of the Clean Water Act. Therefore, I find that Mobil's proposed activity will not violate the requirements of the Clean Water Act.

b. *Clean Air Act*

Sections 108 and 109 of the Clean Air Act, as amended (CAA), 42 U.S.C. §§ 7408 and 7409, direct the EPA to prescribe national ambient air quality standards (NAAQS) for air pollutants to protect the public health and welfare. Pursuant to CAA § 110, 42 U.S.C. § 7410, each state in turn is required to develop and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state.

Mobil states that due to the distance of the drill site from the nearest land, the onshore effects of drilling emissions are negligible, and that emissions from both the onshore and offshore facilities are estimated in accordance with EPA standards and guidelines.[60] Mobil's Initial Brief at 56. The State has commented that since Clean Air Act

[59] Mobil has stated that the proposed cadmium and mercury limits would present serious compliance problems, and that these limits cannot be consistently achieved. *See* Mobil Exhibit 18 at 58.

[60] 30 C.F.R. § 250.33(a). Total estimated emissions from both the onshore and offshore facilities fall below the calculated regulatory exemption levels set forth in 30 C.F.R. § 250.45. Mobil's POE, vol. 1 at B19-1 - B19-6.

issues have not been previously raised by the State, the Secretary's attention should be focussed on whether Mobil's proposed POE will not violate the Clean Water Act. State's Initial Brief at 81. In its comments on this appeal, EPA states that "[b]ased on the available information, the activities associated with the proposed exploratory drilling do not indicate that there would be a violation of the Clean Air Act."[61] Based upon a review of the record, I find that Mobil's proposed POE will not violate the CAA.

4. *Element 4: No Reasonable, Consistent Alternatives Available*

To meet the requirements of Element 4 of Ground I, I must find that "[t]here is no reasonable alternative available (*e.g.*, location, design, etc.) which would permit the activity to be conducted in a manner consistent with the [state's coastal] management program." 15 C.F.R. § 930.121(d). For state objections based on 15 C.F.R. § 930.64(b), the fourth Element of Ground I is usually decided by evaluating the alternative(s) proposed by a state in the consistency objection. *See* Chevron Decision at 58; LILCO Decision at 16. In this case, however, the State's objection to Mobil's proposed POE is based on a lack of information necessary to determine the consistency of the activity. *See* 15 C.F.R. §§ 930.64(d), 930.79(c).

I find that there is no reasonable, available alternative to Mobil's proposed POE which would permit Mobil to conduct the activity in a manner consistent with the State's coastal management program.

[61] Letter from Richard E. Sanderson, Director, Office of Federal Activities, Environmental Protection Agency, to Hon. Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, July 11, 1991 (EPA Comments).

In terms of alternatives, § 930.64(d) imposes different requirements upon a state than does § 930.64(b)(2). Under § 930.64(d) "the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program." Unlike § 930.64(b)(2), § 930.64(d) does *not* require a state to describe in its objection "alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program." If a state lacks information necessary to assess a proposed activity, it would likely lack information necessary to assess possible alternatives to an activity.

Nevertheless, in this case the State indicated in its objection letter that the only alternative available is for Mobil to "provide the information needs identified necessary to adequately assess consistency with the NCCMP." State Objection Letter. The State identified informational deficiencies in addition to those identified in the State's NPDES objection letter. The State continued: "Should Mobil provide the required information, including relevant information needs identified by the Outer Banks Protection Act Review Panel, the State will then be in a position to review the proposed activity to determine whether it may be conducted in a manner consistent with North Carolina's Coastal Management Program." State Objection Letter. Since the information is allegedly necessary to a consistency determination, however, the State cannot determine the probable consistency of the activity prior to the submission of the information by Mobil. I find that the State's suggested alternative of providing the information identified by the State is not a reasonable alternative available which would permit the activity to be conducted

in a manner consistent with the State's coastal management program because there is no indication by the State of the probable consistency of Mobil's proposed activity upon submission of the additional information. *See also* Chevron Decision at 51.

In reviewing the record of this appeal, I have identified two possible alternatives that may be reasonable and available. First, in its briefing for the appeal the State argues that a no-discharge NPDES permit is a reasonable alternative that could allow exploratory drilling to go forward while additional information is gathered through monitoring studies. State's Initial Brief at 86. In Mobil's NPDES appeal for this project, the State asserted, however, that the consistency of this alternative would depend on identification of a suitable disposal site. State's Initial NPDES Brief at 39. In this appeal the State offers no further assurances of the probable consistency of this alternative. *See* State's Initial Brief at 86-89. The barging proposal therefore fails to qualify as an alternative because the State does not indicate whether barging would probably be consistent with the State's CMP since the proposal's consistency is dependent upon identification of a suitable disposal site.[62] Second, the State makes a reference in its initial NPDES brief to possible relocation of Mobil's drilling site. State's Initial NPDES Brief at 39. The State claims, however, that "without additional information on the biological resources located in other potential discharge areas, acceptable alternative sites cannot presently be properly evaluated." State's Initial NPDES Brief at 39. The possible relocation of Mobil's drilling site fails to qualify as an alternative for two reasons. First, the

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[62] The barging alternative would also not address the State's separately-identified concerns regarding Mobil's proposed oil spill contingency plan.

description is too general in nature since the State did not identify the location of an alternative site. *See* Texaco Decision at 36; Korea Drilling Decision at 24. Second, the State does not indicate whether an alternative site would probably allow Mobil to conduct drilling discharges consistent with the State's CMP.

The record for this appeal discloses no reasonable, available alternatives. If such alternatives existed, the State would likely offer them even though not required to do so for objections made pursuant to 15 C.F.R. § 930.64(d). Element 4 requires that alternatives be consistent with state CMPs, and a state is in the best position to evaluate the consistency of a possible alternative. Therefore, based on the record before me, I find that there is no reasonable, available alternative to Mobil's proposed POE which would permit Mobil to conduct the activity in a manner consistent with the State's coastal management program.

Conclusion for Ground I

Based on the findings above, I find that Mobil has not satisfied Element 2 of Ground I. Therefore, the activities described in detail in Mobil's proposed POE are not consistent with the objectives or purposes of the CZMA.

B. *Ground II: Necessary in the Interest of National Security*

I conclude that the proposed activity is not necessary in the interest of national security.

The second statutory ground for an override of a state's objection to a proposed activity is based on a finding that an activity is necessary in the interest of national security. To make this determination I must find that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." 15 C.F.R. § 930.122.

Mobil asserts that decreased reliance on oil imports contributes to the national defense and national security and that exploration is a necessary step in the development of new domestic reserves. Additionally, Mobil contends that there are few large oil and gas reserves to be found,[63] and that the size of the potential natural gas reserve in this area would make its exploration important for national security reasons. Mobil's Final Brief at 57.

In order to decide this ground, I will give considerable weight to the views of the Department of Defense (DOD) and other Federal agencies. 15 C.F.R. § 930.122. In soliciting the views of several Federal agencies, the Deputy Under Secretary asked those agencies to identify any national defense or other national security objectives directly supported by Mobil's proposed POE, and to indicate which of the identified national defense or other national security interests would be significantly impaired if Mobil's activity were not allowed to go forward as proposed.

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[63] I agree with Mobil that our nation's security interests are not static. *See* Mobil's Initial Brief at 88. I note, however, that our nation's concern for energy independence from foreign sources of oil has been longstanding, as exemplified by President Nixon's announcement on November 7, 1973, of "Project Independence." *See* 9 Compilation of Presidential Documents 1309 (1973), *cited in State of Alaska v. Andrus*, 580 F.2d 465, 467 n.1 (D.C. Cir.), *vacated in part sub nom, Western Oil & Gas Assoc. v. State of Alaska*, 439 U.S. 922 (1978). Moreover, the Secretary has previously held that the size of oil and gas reserves is not determinative of whether the requirements of this ground are met. The degree of importance the Secretary assigns the size of oil and gas reserves in deciding whether interests are significantly impaired depends on the facts of the case. Chevron Decision at 71.

The DOD responded by stating that it saw no direct linkage under Ground II between Mobil's POE and any immediate national security needs.[64] The DOD did recognize, however, long-term national security benefits to be gained from the development of domestic energy sources. *Id.* I interpret DOD's comments to mean that in the opinion of DOD, national security interests would not be significantly impaired if the project were not allowed to go forward as proposed.

Other Federal agencies also support the general proposition that OCS exploration contributes to national security interests. The DOE stated that "[p]roducible oil and gas reserves in the Atlantic Outer Continental Shelf (OCS) can help this country replace imports, thereby meeting both energy and economic security and national defense goals. However, when environmentally benign exploitation such as that proposed by Mobil is blocked, this option is lost." DOE Comments. The DOE continues:

> Neither our domestic nor foreign policy should be subject to the availability of imported oil especially when the opportunity exists to develop domestic natural gas resources that can replace important [sic] oil. Consequently, we believe that this project is necessary in the interest of national security.

Id. The NSC stated that it is in the national security interest to increase domestic oil production where such production is economic and consistent with environmental procedures.[65] The Department of the Treasury recognizes

[64] Letter from F.S. Sterns, Deputy Assistant Secretary, Department of the Navy, to Margo E. Jackson, Assistant General Counsel for Ocean Services, NOAA, June 27, 1991, responding on behalf of the Secretary of Defense.

[65] Memorandum from William F. Sittmann, Executive Secretary, National Security Council, to Thomas Collamore, Chief of Staff and Assistant Secretary, Department of Commerce, April 3, 1991.

significant benefits to national security from domestic energy resources.[66] The DOI states that there is a direct relationship between national security and the success of the Federal program to develop offshore energy resources. DOI Comments. I find that none of these comments specifically address how these interests would be "significantly impaired" if Mobil's proposed POE is not allowed to proceed "as proposed."

MMS commented, however, that

> Denial of a Department of Commerce override of the State's consistency determination could well, in the extant case, deprive this Nation of a secure and environmentally sound source of as much as 5 tcf of natural gas from the Manteo Prospect. This amount of gas is the energy equivalent of approximately 1 billion bbl of crude oil and represents a major step in the direction of domestic energy security. As the recent events in the Persian Gulf clearly indicate, this Nation's domestic energy security, or rather the present lack thereof, significantly compromises national defense and national security.

MMS Comments at 42. I decline to give much weight to MMS' comment on significant impairment, however, because its comment appears to be based on speculation that denial of Mobil's POE could well foreclose any possibility of future oil and gas exploration of the Manteo Prospect. Denial of Mobil's proposed one-well exploration plan for Manteo Area Block 467 would not preclude the submission of other plans of exploration for the Manteo

[66] Letter from Maynard S. Comiez, Director, Office of Policy Analysis, Department of the Treasury, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, April 8, 1991.

Prospect, an area which includes approximately 21 lease blocks.

Conclusion for Ground II

I find that the comments of the Federal agencies fail to persuade me that a national defense or other national security interest would be significantly impaired if Mobil were not permitted to explore Manteo Area Block 467 as proposed. Therefore, based on the record before me, I now find that the requirements for Ground II have not been met.

V. CONCLUSION AND SECRETARIAL DECISION

I have found that Mobil's Proposed POE is neither consistent with the objectives of the CZMA nor necessary in the interests of national security. Accordingly, I decline to override North Carolina's objection to Mobil's proposed POE.

/s/ David Barr
for Ronald H. Brown
Secretary of Commerce

September 2, 1994

DECISION AND FINDINGS

IN THE

DRILLING DISCHARGE

CONSISTENCY APPEAL OF

MOBIL OIL EXPLORATION &

PRODUCING SOUTHEAST, INC.

FROM AN OBJECTION BY THE

STATE OF NORTH CAROLINA

SEPTEMBER 2, 1994

DECISION

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Executive Summary

Introduction

Mobil Oil Exploration & Producing Southeast, Inc. (Mobil) has requested the Secetary of Commerce to override the State of North Carolina's (State's) objection to its proposal to discharge drilling wastes associated with Mobil's planned exploration of the outer continental shelf (OCS). Mobil proposes to drill an exploratory well in OCS Manteo Area Block 467 in order to evaluate its hydrocarbon potential. As explained in more detail below, the Secretary declines to override North Carolina's objection.

Mobil has also filed a separate appeal from the State's objection to its proposed Plan of Exploration at the drill site. A Secretarial decision in that appeal is being issued concurrently with the decision in this appeal. In that companion decision, the Secretary also declines to override North Carolina's objection to Mobil's proposed exploration of Manteo Area Block 467. Accordingly, North Carolina's objection under the CZMA prevents any federal agency from granting necessary permits for Mobil's proposed discharge of drilling wastes or Mobil's proposed Plan of Exploration.

Mobil's appeal arises under the Coastal Zone Management Act (CZMA), an act administered by the National Oceanic and Atmospheric Administration (NOAA), an agency within the Department of Commerce. Section 307 of the CZMA provides that any applicant for a required federal license or permit to conduct an activity affecting any land or water use or natural resource of the coastal zone, shall provide to the permitting agency a certification that the proposed activity complies with the enforceable policies of a state's coastal management program.

Mobil has requested a permit from the U.S. Environmental Protection Agency (EPA) for its proposed discharge of drilling wastes. Because North Carolina has objected to the project, EPA may not grant a permit for the activity, unless the Secretary of Commerce finds that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

Background

About 39 miles off North Carolina's coast lies OCS Lease A-0236, also known as Manteo Area Block 467, for which Mobil is the operator. Mobil proposes to drill one exploratory well in search of natural gas at this site, discharge drilling wastes in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, and conduct support activities primarily out of Morehead City, North Carolina. Mobil's proposed drilling site is located near "The Point," a biologically unique area defined by the convergence of the Gulf Stream, slope, and shelf waters, containing significant natural resources. Moreover, fish resources found near The Point are harvested by North Carolina fishermen. Mobil applied to the EPA for an NPDES permit, and certified that the drilling discharges covered by the permit were consistent with North Carolina's coastal management program.

In part because a significant food source would be exposed to Mobil's proposed wastes, on July 17, 1990, the State objected to Mobil's proposed discharge activities on the basis of a lack of necessary site-specific data and information. Specifically, the State contends that there is insufficient information to make a consistency determination on the impacts arising from Mobil's activity, without the completion of a four-part fisheries study. The State also

identified informational concerns relating to other coastal resources potentially affected by Mobil's proposed activity.

Under § 307(c)(3)(A) of the CZMA, 16 U.S.C. § 1456 (c)(3)(A), and the implementing regulations, the State's consistency objection precludes EPA from issuing the NPDES permit unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I), or otherwise necessary in the interests of national security (Ground II).

In accordance with CZMA § 307(c)(3)(A) and 15 C.F.R. Part 930, Subpart H, Mobil filed with the Secretary an appeal from the State's objection to Mobil's consistency certification for the proposed NPDES permit activities. Mobil appealed pursuant to Ground I and Ground II. Additionally, three threshold issues were raised during the course of the appeal.

Threshold Issues

Upon consideration of the information submitted by Mobil, the State, the public, and several Federal agencies, the Secretary made the following findings on the threshold issues:

A. *Request for a Dismissal*

The State requested that the Secretary dismiss the appeal for good cause, arguing that Mobil failed to provide data and information necessary to the Ground I and Ground II tests, and that Mobil failed to base its appeal on its proposed discharge activity. The Secretary declined to dismiss Mobil's appeal for good cause. The Secretary found that in this case if there is insufficient data and information in the record to make the findings necessary for an override, rather than dismiss the appeal as the State has

requested, the Secretary will issue a decision which will reflect an inability to make these findings. The Secretary also found that Mobil has based arguments for the two grounds for a Secretarial override on its proposed drilling discharges.

B. *Burden of Proof and Adequacy of Information*

The parties raised an issue as to the burden of proof and the adequacy of information. The State argued that Mobil has failed to provide adequate information to assess the impacts of its proposed activity, let alone prove that the grounds for an override have been met. Mobil asserted that the State failed to establish any impact of Mobil's proposed discharges on North Carolina's coastal resources. The Secretary found that the burden is on Mobil to prove the grounds for an override of the State's objection, and that in examining the information in the record of the appeal, the Secretary will necessarily determine the adequacy of information.

C. *Scope of the Activity*

The parties raised an issue as to the scope of the activity under consideration in this appeal. The activity at issue is Mobil's proposed discharges of drilling wastes. Mobil's proposed plan of exploration for Manteo Area Block 467 is not the subject of this appeal. However, since Mobil's proposed discharges are a part of Mobil's proposed exploration, there will be some overlap of issues making Mobil's plan of exploration relevant to the grounds for reviewing this appeal.

D. *Conclusions Regarding Threshold Issues*

The Secretary determined that threshold issues raised by Mobil and the State of North Carolina did not preclude him from considering the merits of this case.

Ground I: Consistent with the Objectives or Purposes of the CZMA

To find that the proposed activity satisfies Ground I, the Secretary must determine that the project satisfies all four of the elements specified in the regulations implementing the CZMA (15 C.F.R. § 930.121). If the project fails to satisfy any one of the four elements, it is not consistent with the objectives or purposes of the CZMA and federal licenses or permits may not be granted. The four elements of Ground I are:

1. The proposed activity promotes one or more of the competing national objectives or purposes contained in the CZMA.

2. The proposed activity's individual and cumulative adverse effects on the coastal zone are outweighed by its contribution to the national interest.

3. The proposed activity will not violate any requirements of the Clean Water Act or the Clean Air Act.

4. There is no reasonable alternative available that would allow Mobil to discharge its drilling wastes in a manner consistent with the State's coastal management program.

The Secretary made the following findings with regard to Ground I:

1. Mobil's proposed discharge activity furthers the exploration of offshore gas resources, and thus, in-

directly furthers one of the objectives or purposes of the CZMA.

2. The information in the record is inadequate to determine whether the national interest benefits of Mobil's proposed activity outweigh the proposed activity's adverse effects on the State's coastal resources and uses.

3. Mobil's proposed discharge activity will not violate the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

4. There is no reasonable alternative available to Mobil that would allow its proposed discharge activity to be carried out in a manner consistent with the State's coastal management program.

Ground II: Necessary in the Interest of National Security

There will be no significant impairment to a national defense or other national security interest if Mobil's proposed discharge activity is not allowed to go forward as proposed.

Conclusion

Because Mobil's proposed discharge activity does not meet the requirements of either Ground I or Ground II, the activity may not proceed as proposed.

LIST OF ABBREVIATIONS AND DEFINED TERMS

CAA—Clean Air Act
CMP—Coastal Management Program
COE—Corps of Engineers
CSA—Continental Shelf Associates, Inc.
CWA—Clean Water Act
CZMA—Coastal Zone Management Act
DEM—Division of Environmental Management
DER—Draft Environmental Report
DOD—Department of Defense
EA—Environmental Assessment
EPA—Environmental Protection Agency
ESRP—Environmental Sciences Review Panel
DOE—Department of Energy
DOI—Department of the Interior
FER—Final Environmental Report
FWS—Fish and Wildlife Service
MMS—Minerals Management Service
MOEPSI—Mobil Exploration & Producing Southeast, Inc.
NAAQS—National Ambient Air Quality Standards
NCDMF—North Carolina Division of Marine Fisheries
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
NPDES—National Pollutant Discharge Elimination System
NRC—National Research Council
NSC—National Security Council
OCRM—Office of Ocean and Coastal Resource Management
OCS—Outer Continental Shelf
OOC—Offshore Operators Committee
State—State of North Carolina

DECISION

I. FACTUAL BACKGROUND

In Federal waters, about 39 miles off North Carolina's coast, lies Outer Continental Shelf (OCS) Lease OCS A-0236, also known as Manteo Area Block 467. *See* Figure 1. This area was leased in September 1981 by Mobil [1] and its partners in OCS Lease Sale 56, and is a frontier area for oil and gas exploration. Mobil is the operator of the lease. Mobil's Statement in Support of a Secretarial Override (Mobil's Initial Brief), at 2-3. The lease block lies at the crest of a buried reef complex which runs in a general north-south direction along the edge of the Mid-Atlantic OCS.[2] Mobil's Initial Brief at 7.

The activity at issue in this case is the proposed marine discharge of drilling wastes by Mobil as described in its application for a National Pollutant Discharge Elimination System (NPDES) permit [3] for Lease OCS A-0236. Mobil

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[1] Mobil Oil Exploration & Producing Southeast, Inc., a subsidiary of Mobil Exploration & Producing U.S. Inc., is the proposed operator. For the purposes of description in this decision, both entities will be referred to as "Mobil."

[2] The Minerals Management Service (MMS) estimates that there is a 90 percent chance that no hydrocarbons will be discovered in the area of which Block 467 is a part. If a discovery is made, however, the discovery is likely to be gas rather than oil, based on geochemical analyses of previous wells drilled on the Atlantic OCS. Final Environmental Report on Proposed Exploratory Drilling Offshore North Carolina, MMS, August 1990, (FER), at III-5. The potential size of a discovery could be more than five trillian cubic feet of natural gas. Letter from David C. O'Neal, Assistant Secretary, Land and Minerals Management, Department of the Interior, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, January 22, 1991. If such a discovery is made, the MMS estimates that approximately 103 wells would be required to recover this amount of gas. FER at IV-13.

[3] *See* Federal Water Pollution Control Act § 402(a), 33 U.S.C. § 1342(a).

submitted its application for an NPDES permit to the U.S. Environmental Protection Agency (EPA) on August 18, 1989. A delay of several months ensued.[4] Finally, on April 17, 1990, Mobil certified that the drilling discharges covered by the permit were consistent with North Carolina's Coastal Management Program (CMP). Mobil proposes to drill one exploratory well in a water depth of 2,690 feet and estimates the drilling schedule to be approximately 114 days, sometime between May and October. Mobil's Initial Brief at 8-9. Mobil will support the drilling operation with a facility in Morehead City, North Carolina. Mobil's Initial Brief at 9. The proposed drilling site is located, however, near an area known as "The Point."

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4 On October 11, 1989, the National Oceanic and Atmospheric Administration's (NOAA's) Office of Ocean and Coastal Resource Management (OCRM) granted the State of North Carolina's (State's) request to review Mobil's proposed discharges for consistency. Letter from Donald E. Critchfield, Acting Director, OCRM, NOAA, to George T. Everett, Director, Department of Natural Resources and Community Development, North Carolina Division of Coastal Management, October 11, 1989. Mobil then withdrew a prior consistency certification. Letter from James C. Martin, Manager, Environmental, Regulatory & Loss Prevention North America, Mobil, to George T. Everett, November 16, 1989. On January 5, 1990, the State renewed its request that Mobil withdraw its NPDES permit application due to the State's informational concerns. Letter from George T. Everett to James C. Martin, January 5, 1990. On February 2, 1990, the State requested a determination from NOAA that the State would not lose its consistency objection rights by waiting beyond the February 21, 1990 deadline. Letter from I. Clark Wright, Jr., North Carolina Associate Attorney General, to Margo E. Jackson, Attorney, NOAA, February 2, 1990. On February 9, 1990, NOAA informed the State that a presumption of concurrence would not occur. Letter from Margo E. Jackson, Acting Assistant General Counsel for Ocean Services, NOAA, to I. Clark Wright, Jr., February 9, 1990.

[Figure 1 Map Omitted in Printing]

The Point is an area characterized by unique physical and biological qualities. Physically, The Point is a mobile, transitional ocean area defined by the convergence of the Gulf Stream, continental slope, and shelf waters. The Point is not a fixed location, rather its position fluctuates with changes in the location of the western boundary of the Gulf Stream. Water mass convergences at The Point concentrate nutrients, plankton and floating materials near the sea surface, resulting in weedlines. Biologically, The Point is a highly productive and ecologically unique area essential to the State's coastal zone. Fish resources found near The Point such as yellowfin, bluefin, blackfin, and bigeye tuna, white and blue marlin, sailfish, swordfish, wahoo, and dolphin are harvested by North Carolina fishermen. Scientists view the area as one of anomalously high biomass for the continental slope.[5] In addition to the significant fishery resources and the unusually abundant benthic community, marine bird populations are extensive, and turtles, whales and dolphins have regularly been observed at the site. *Id.* Many species of turtles, birds and mammals that frequent The Point are endangered and vulnerable to adverse environmental effects. The National Marine Fisheries Service (NMFS) has identified the area as extremely important to NMFS and NOAA trust resources. Memorandum from William W. Fox, Jr., Director, NMFS, to Margo Jackson, Assistant General Counsel for Ocean Services, November 27, 1990 (NMFS Comments).

While drilling its exploratory well, Mobil proposes to discharge much of its wastes into the Atlantic Ocean. Mobil's wastes will include drill cuttings, drilling fluids,

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5 Testimony of Dr. Alan Hulbert before the Committee on Interior and Insular Affairs (Mobil Exhibit 28).

and other wastes, such as deck drainage and sanitary wastes. The chemical composition of Mobil's wastes will likely include hydrocarbons, paraformaldehyde, and metals such as barium, cadmium, mercury and lead. Mobil states that compliance with the proposed cadmium and mercury limits cannot be consistently achieved because of varying concentrations of barite in drilling fluids and because of metal contributions from the formation into which it will be drilling.[6] Some wastes will be shunted at least 25 feet below the surface of the water. Other wastes will be discharged near the seafloor.

In part because a significant food source would be exposed to Mobil's proposed wastes, on July 17, 1990, the State of North Carolina (State) objected to Mobil's proposed discharge activity on the basis of a lack of necessary site-specific data and information.[7] *See* 15 C.F.R. § 930.64(d). Specifically, the State contends that there is insufficient information to make a consistency determination on the impacts arising from Mobil's activity, without the completion of a four-part fisheries study.[8] State Objecton Letter. The State claims that the information is

[6] Mobil's Comments and Responses to Issues of Concern for Draft NPDES Permit for Manteo Block 467 Exploratory Well Discharges (Mobil Exhibit 18), May 1990, at 58.

[7] *See* Letter from Roger N. Schecter, Director, North Carolina Division of Coastal Management, to William C. Whittemore, Senior Counsel, Mobil, July 17, 1990 (State Objection Letter).

[8] The first portion of the proposed study is an investigation of larval and juvenile abundance and distribution in the vicinity of the Mobil project. The second part of the State's proposal is to gather additional information centered on the *Sargassum* community known to occur in the area of the proposed activity. The third portion of the proposed study is to measure the effects of drilling waste deposition on bottom organisms. The fourth section of the State's proposal is documentation of the commercial and recreational fishing in the vicinity of the drill site and The Point.

necessary to determine the biological importance of the proposed drill site area to the State's fisheries, the importance of the area to marine resources, and the economic importance of the proposed drill site area to the State's fishermen. *Id.* In addition to explaining the basis of its objection the State notified Mobil of its right to appeal the State's decision to the Department of Commerce (Department) as provided under § 307(c)(3)(A) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. § 1456(C)(3)(A), and the implementing regulations, 15 C.F.R. Part 930, Subpart H.

Pursuant to CZMA § 307(c)(3)(A) and 15 C.F.R. §930.131, the State's consistency objection precludes EPA from issuing the NPDES permit unless the Secretary of Commerce (Secretary) finds that the activity, notwithstanding the State's objection, is either consistent with the objectives or purposes of the CZMA (Ground I), or otherwise necessary in the interests of national security (Ground II).[9]

II. APPEAL TO THE SECRETARY OF COMMERCE

On July 31, 1990, in accordance with CZMA § 307(c)(3)(A) and 15 C.F.R. Part 930, Subpart H, Mobil filed with this Department a notice of appeal from the State's objection to Mobil's consistency certification for the proposed NPDES permit activities.[10] Mobil's notice of appeal

[9] There are references in the record to the Deputy Secretary as the decisionmaker in this case because on May 19, 1989, then Secretary of Commerce Robert Mosbacher recused himself from issuing decisions in appeals involving oil and gas issues and delegated that authority to the Deputy Secretary. I have not recused myself from issuing this decision.

[10] Letter from William C. Whittemore, Senior Counsel, Mobil, to Hon. Robert A. Mosbacher, Secretary of Commerce, July 27, 1990 (notice of appeal).

requested an extension of time to submit its full supporting statement, data and other information. By letter of September 25, 1990, the Department set an initial briefing schedule for the parties.[11] Mobil perfected its appeal by filing a brief with supporting information and data on September 27, 1990. The State filed an initial brief with the Department on November 23, 1990.

Mobil has also filed a separate appeal from the State's objection to its proposed Plan of Exploration (POE) at the drill site. A Secretarial decision in that appeal is being issued concurrently with the decision in this appeal.[12]

The administrative record of this appeal also contains comments submitted by the public and Federal agencies. By way of notices in the *Federal Register* and local newspapers,[13] the Department requested public comments and announced the date of a public hearing.[14] Public com-

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11 Mobil's initial brief was due on September 28, 1990, and the State's initial brief was due on November 12, 1990. The State's initial briefing deadline was extended to November 21, 1990.

12 Since Mobil's NPDES permit appeal and POE appeal for the Manteo Area Block 467 drill site have not been consolidated, they contain distinct administrative records upon which I will base my decisions in the two appeals. However, much of the information concerning Mobil's activities is common to the record of the two appeals. I also note that much of the discussion of issues is similar in the decision documents for these two appeals.

13 *See* 55 *Fed. Reg.* 45629 (October 30, 1990), and notices in the *Coastland Times* (October 23, 25, 28, 1990) and the *Virginian Pilot* (November 5, 6, 7, 1990).

14 On August 23, 1990, pursuant to 15 C.F.R. § 930.129, the State requested that the Secretary hold a public hearing concerning the issues raised in Mobil's appeal. Letter from Robin W. Smith, North Carolina Assistant Attorney General, to Margo Jackson, Assistant General Counsel, NOAA, August 23, 1990. On September 13, 1990, the Department granted the State's public hearing request. Letter from Thomas A. Campbell, General Counsel, NOAA, to Robin W. Smith, North Carolina Assistant Attorney General, September 13, 1990.

ments were received and incorporated as part of the record of this appeal. The Department held a public hearing on December 13, 1990, in Manteo, North Carolina, addressing issues raised in the appeal. Oral and written comments were received from Mobil, the State, local public officials, the public and various interest groups. On December 27, 1990, the record closed for public comments. The Department also solicited the views of fourteen Federal agencies,[15] and the National Security Council (NSC) regarding the two grounds for a Secretarial override of the State's objection. With the exception of the Department of State, all of the agencies and the NSC responded with comments.

As with other aspects of this appeal, the final briefing schedule and the closure of the administrative record were the subject of discussion between Mobil and the State. The parties concurrently filed their final briefs on June 18, 1991.[16] The administrative record of the appeal was reopened on April 29, 1992, to accept a report from the Environmental Sciences Review Panel (ESRP),[17] entitled

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15 Comments were solicited from the Department of Defense, Department of the Treasury, Department of State, Department of Transportation, Department of Energy, Department of the Interior, Fish and Wildlife Service, National Park Service, Minerals Management Service, Environmental Protection Agency, Federal Energy Regulatory Commission, National Marine Fisheries Service, Army Corps of Engineers and the Coast Guard.

16 Mobil's Final Statement in Support of a Secretarial Override, June 17, 1991 (Mobil's Final Brief); North Carolina's Response to the Secretary's Final Briefing Request, June 17, 1991 (State's Final Brief).

17 The ESRP was created under § 6003 of the Oil Pollution Act of 1990, 33 U.S.C. § 2753, to assess whether the available physical oceanographic, ecological and socioeconomic information relating to the North Carolina OCS was adequate to enable the Secretary of the Interior to carry out his responsibilities under the Outer Continental Shelf Lands Act. The Department determined that

Report to the Secretary of the Interior from the North Carolina Environmental Sciences Review Panel as Mandated by the Oil Pollution Act of 1990, January 22, 1990 (ESRP Report). Finally, Mobil and the State were provided an opportunity to file responses to any issues raised by the ESRP Report.

Although all materials received have been included in the record, I have considered them only as they are within my scope of review. After examining the State's objection, I have determined that the State has complied with the requirements of the CZMA and its implementing regulations for properly lodging an objection.[18] *See* CZMA § 307(c)(3)(A); 15 C.F.R. §§ 930.64(a), (d). Based on all relevant information in the administrative record, I will now examine threshold issues raised in the appeal prior to my determination of whether the grounds for a Secretarial override have been satisfied.[19]

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while the purpose of the ESRP report differs from the purpose of this appeal, its findings may be relevant to the issues raised in this appeal. Letters from Gray Castle, Deputy Under Secretary, Department of Commerce, to William C. Whittemore, Senior Counsel, Mobil, and Roger N. Schecter, Director, North Carolina Division of Coastal Management, February 25, 1991.

18 *See* Decision and Findings in the Consistency Appeal of Shickrey Anton, (Anton Decision), May 21, 1991, at 3; Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Decision), October 29, 1990, at 5.

19 Both Mobil and the State have raised the issue of bias. Mobil asserts that the State's consistency position is tainted. Mobil's Final Brief at 5. The State asserts that the MMS has an energy production bias. State's Final Brief at 13, 34. I will accord, however, what I determine to be the appropriate weight to comments received in this appeal.

III. THRESHOLD ISSUES

A. *Request for a Dismissal*

The State has requested that I dismiss the appeal for good cause. *See* 15 C.F.R. § 930.128. The State argues: "Good cause exists in that . . . [Mobil] has failed to provide data and information to the Secretary's proper determination of the issues raised in the Ground I and Ground II tests." North Carolina's Response to the Secretary's Briefing Request and to Mobil's Statement of Reasons and Brief, November 21, 1990, (State's Initial Brief), at vi. The State also argues that dismissal is also appropriate under 15 C.F.R. § 930.128(d) because Mobil has "failed to base its appeal on Ground I or Ground II as applied to the proposed activity." State's Initial Brief at vi. The State asserts that Mobil's argument for a Secretarial override is based on its overall drilling activities rather than on its proposed discharge of drilling wastes into the Atlantic Ocean. *See* State's Initial Brief at vi-vii.

The regulations at 15 C.F.R. § 930.128 provide a non-inclusive list of good causes that are grounds for dismissal. Good cause includes "[f]ailure of the appellant to base the appeal on grounds that the proposed activity either (1) is consistent with the objectives or purposes of the [CZMA] or (2) is necessary in the interest of national security." 15 C.F.R. § 930.128(d).

Based upon a review of the record of this appeal, I decline to dismiss Mobil's appeal for good cause. First, as I will discuss in the section on burden of proof, in this case if I determine that there is insufficient data and information in the record for me to make the findings necessary for an override, rather than dismiss the appeal as the State has requested, I will issue a decision which will reflect my inability to make these findings. Second, I decline to dismiss the appeal based on § 930.128(d).

Rather, I find that there is sufficient evidence that Mobil has also based its arguments on the two grounds for a Secretarial override as applied to the proposed activity. Therefore, I decline to dismiss the appeal as requested by the State.

B. *Burden of Proof and Adequacy of Information*

The parties have raised an issue as to the burden of proof and the adequacy of information in this appeal. The State argues that Mobil has failed to provide adequate information to assess the impacts of its proposed activity, let alone prove that the grounds for an override have been met. On the other hand, Mobil asserts that the State has failed to establish any "real impact of these distant offshore discharges on North Carolina's coastal resources." Mobil's Final Brief at 1. Mobil also argues that there is adequate information on the affects of the proposed drilling discharges, and that any effects are minor. *See* Mobil's Initial Brief at 26.

Aside from the requirements imposed on the State for properly lodging an objection, the Appellant bears the burden of proof and the burden of persuasion. *See* Anton Decision at 4; Chevron Decision at 4-5. As stated in the Anton Decision:

> The regulations provide that the Secretary shall find that a proposed activity satisfies either of the two statutory grounds "when the information submitted *supports* this conclusion." 15 C.F.R. § 930.130(a) (emphasis added). Thus, without sufficient evidence the Secretary will decide in favor of the State.

Anton Decision at 4 (emphasis in original). Therefore, for me to find for Mobil I must make the findings specified in the regulations at 15 C.F.R. §§ 930.121 or 930.122.

An absence of adequate information in the record inures to the State's benefit because such an absence would prevent me from making the required findings.[20]

I will make my decision in this appeal based on the evidence in the record before me. The record contains much non-site-specific information as well as information collected for other purposes, raising the issue of the relevance of this information to this case. *C.f.* National Research Council, "Drilling Discharges in the Marine Environment" (1983) (NRC 1983 Report) at 6. I note this statement of the National Research Council (NRC):

> Marine ecosystems on the OCS clearly vary in their sensitivities to anthropogenic stress, and caution is therefore advisable in extrapolating observations from one region to another. On the other hand, to dismiss all research results not obtained directly from the environment analyzed may amount to ignoring valuable data.

NRC 1983 Report at 137. In evaluating the information in the record, I will necessarily determine the adequacy of the information for determining whether Mobil has satisfied the two grounds for a Secretarial override,[21] recog-

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[20] The State objection in the Decision and Findings in the Consistency Appeal of Long Island Lighting Company, (LILCO Decision), February 26, 1988, was based on lack of information. In that case, the Secretary found that the record contained sufficient information, in particular comments from Federal agencies, for him to make a finding that the Appellant's project would have no adverse effects on the natural resources of the state's coastal zone. *See* LILCO Decision at 12-13.

[21] The Secretarial override process is a separate and independent decision-making function from the State's consistency review process. *See* Anton Decision at 3; Chevron Decision at 5. Since the State's consistency review and the Secretarial override process are based on different evaluative criteria the adequacy of information

nizing that some information and conclusions contained in the record may not be directly applicable to the facts of this case.[22] The two parameters for adequacy which I will use are completeness of information and scientific quality of information.

In its 1989 report the NRC recognized that the quantity and types of ecological information needed generally varied with the stage of the overall project, with less site-specific information needed for leasing decisions, more site-specific information needed for exploration decisions, and still more information needed for a decision to develop and produce hydrocarbon resources. *See* National Research Council, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" (1989) (NRC 1989 Report) at 42-43. Moreover, the NRC generally identified the information necessary for leasing, exploration, development and production decisions. *See* NRC 1989 Report at 43. I agree with the conclusions of the NRC on this point.[23] Therefore, I find that for me to adequately identify the impacts of the proposed project, the record should disclose, at a minimum, a characterization of the environment, an identification of the biological resources at risk, and an identification of basic ecological relationships. *See* NRC 1989 Report at 5.

The NRC provides further guidance, which I adopt in this case, as to the nature of the information necessary to

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for thse two determinations may differ. In addition, the administrative records for these two determinations may differ.

22 *See, e.g.*, Mobil's Supplemental Final Statement in Support of a Secretarial Overrride (Mobil's Supplemental Final Brief), May 28, 1992, at 5.

23 Mobil also agrees that the 1989 National Research Council Report provides important guidance. *See* Mobil's Initial Brief at 27.

make an informed decision. This necessary information would include (1) a characterization of major habitat types; (2) a catalog of representative species (or major species groups) present in the lease area; and (3) seasonal patterns of distribution and abundance. NRC 1989 Report at 43. Furthermore, in addition to this information which the NRC states is generally necessary to make an informed leasing decision, the record should generally disclose (1) basic ecological information (*e.g.*, habitat, feeding behavior and reproduction); (2) basic information on factors determining vulnerabiltiy of various species; and (3) information on the potential effects of various agents of impact. NRC 1989 Report at 43.

The adequacy of information will also depend on the likelihood[24] of an impact as well as on the potential extent or severity of an impact. *C.f.* Chevron Decision at 44; Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon SRU Decision), November 14, 1984, at 15; NRC 1989 Report at 54, 59-60. As stated by the NRC, where unique habitats or endangered and rare species exist, more extensive characterization of the sensitivity of biota to OCS activities, recovery rates, and identification of mitigating measures may be required before leasing. NRC 1989 Report at 43. Generally, less information is necessary where the likelihood or the extent of impacts may be low, and more

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24 The North Carolina Environmental Sciences Review Panel states:

> Risk assessment clearly and appropriately requires application of probability theory to permit proper evaluation of proposed OCS activities, but the use of probability in determining standards of completeness of environmental information gathering should be largely limited to exclusion of exceedingly improbable events from extensive evaluation.

ESRP Report at 81.

information is necessary where the likelihood or the extent of impacts may be high.[25]

C. *Scope of the Activity*

The parties have raised an issue as to the scope of activity under consideration in this appeal. The sole effect of overriding a State objection is to authorize the Federal agency from whom the license or permit in question is sought to issue the license or permit notwithstanding the State's consistency objection. Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., (Korea Drilling Decision), January 19, 1989, at 4-5. The activity that the EPA is authorized to permit in this case is the one that the State reviewed, as modified by commitments by the Appellant during the course of this appeal. *See* Korea Drilling Decision at 5. Accordingly, the activity I am considering here on appeal consists of Mobil's proposed drilling discharges, as described in its NPDES permit application, and Mobil's statements during the course of the appeal, which I view as commitments, as to the inclusion of 19 additional measures to further protect the State's coastal resources, including in part:

- Pre-discharge dilution of drilling discharges with sea water in a 10:1 ratio;
- A maximum 30-barrel-per-hour discharge rate limitation for drilling fluids and cuttings once the riser has been set;

[25] The extent of the adverse effects will depend on several factors including the nature of the affected habitats and species, the toxicity of the discharges, the exposure concentration over time, the potential for bioaccumulation and the chemical/physical properties of the receiving waters. *See* Bowler and Petrazzuolo, *Draft Ocean Discharge Criteria Evaluation, NPDES Permit No. NC-0052523*, (Mobil Exhibit 27) at 10-1; NRC 1989 Report at 5.

- Collection of fish eggs and larvae in the drill site vicinity to monitor the effects of the drilling activity;
- Use of a static-sheen test in place of the normally-used visual sheen test for free oil in discharges;
- Placement of the rig cooling water intake 25 feet below sea surface to minimize possible entrainment of fish eggs and larvae;
- Sampling and photodocumentation to monitor the fate and effect of discharges on the benthos; and
- Collection of data regarding the presence of, and impacts from proposed activities on, marine mammals, sea turtles, and birds.

Mobil's Final Brief at 36-37; *see also* Letter from Bruce G. Weetman, Regional Director, Minerals Management Service, to Margo E. Jackson, Assistant General Counsel, NOAA, December 27, 1990 (MMS Comments) at 41-43. Mobil estimates that the waste volumes to be covered by the NPDES permit include: drilling fluids[26] (13,300 barrels), drill cuttings (2,775 bbl), sanitary wastes (176,700 gallons), and domestic wastes (885,000 gallons). Other discharges to be covered by this permit

[26] The five basic components of drilling fluids are barium sulfate, bentonite, lignosulfonate, lignite, and sodium hydroxide. Mobil's drilling fluids would be water-based. *See* Mobil Exhibit 27. In general, drilling fluids have also been found to contain small concentrations of metals such as arsenic, cadmium, chromium, copper, lead and mercury. *Id.* Mobil's proposed permit limits the cadmium and mercury content. *Id.* Acute toxicity tests of whole drilling fluids have generally produced low toxicity. *Id.* Toxicity varies with the organism and with the life cycle, with larval stages generally more sensitive. *Id.*

include deck drainage,[27] produced water,[28] produced sand and other wastes.

I will also consider the cumulative effects of Mobil's activity, and so I will consider the adverse effects of other reasonably foreseeable activities. In particular, I find that Mobil's activities described in detail in its proposed POE are reasonably foreseeable and will be relevant to my consideration of cumulative effects in this case. I note, however, that since the consistency of NPDES permit activities is an issue distinct from the consistency of plan of exploration activities,[29] Mobil has filed a separate appeal to the State's objection to its proposed POE.

IV. GROUNDS FOR OVERRIDING A STATE OBJECTION

Pursuant to CZMA § 307(c)(3)(A) and 15 C.F.R. § 930.131, Federal licenses or permits required for a proposed activity may be granted despite a consistency objection if I find that the activity is (1) consistent with the objectives or purposes of the CZMA (Ground I), or (2) otherwise necessary in the interest of national security (Ground II). *See also* 15 C.F.R. § 930.130(a). The

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[27] Deck drainage can contain oil, detergents, and acids, which are generally neutralized prior to disposal. *See* Mobil Exhibit 27 at 3-7–3-8.

[28] Produced water is the water brought up from the well and constitutes a major waste stream from OCS activities. Produced water can contain hydrocarbons, biocides, coagulants, corrosion inhibitors, cleaners, dispersants, salts, benzene, cyanides, toluene, and trace metals such as cadmium, chromium, lead and mercury. *See* Mobil Exhibit 27 at 3-8.

[29] *See* Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989, at 4; Chevron Decision at 7; Korea Drilling Decision at 14.

Appellant has pleaded both grounds. The Department's regulations interpreting these two statutory grounds are codified at 15 C.F.R. §§ 930.121 and 930.122.

A. *Ground I: Consistent with the Objectives or Purposes of the CZMA*

The first statutory ground (Ground I) for overriding the State's objection to the proposed project is that the activity is consistent with the objectives or purposes of the CZMA. To make a finding on this ground I must determine that the proposed activity satisfies all four of the elements specified in 15 C.F.R. § 930.121.

1. *Element 1: Activity Furthers One or More Objectives of the CZMA*

To satisfy Element 1 of Ground I, I must find that the activity furthers one or more of the competing national objectives or purposes contained in the CZMA. 15 C.F.R. § 930.121(a). I find that the proposed project fosters one or more of the objectives of the CZMA, and therefore Element 1 is satisfied.

Congress has broadly defined the national interest in coastal zone management to include both the protection and development of coastal resources. Consequently, as stated in previous decisions, this Element normally will be satisfied on appeal. Decision and Findings in the Consistency Appeal of Amoco Production Company, (Amoco Decision), July 20, 1990, at 14. The State, however, has questioned whether the proposed drilling discharges, a subset of Mobil's overall exploration efforts at the Manteo site, further one or more of the competing national objectives or purposes of the CZMA. Mobil's proposed dis-

charges will satisfy this Element even if they only indirectly further the objectives or purposes of the CZMA.[30]

The State argues that Mobil's proposed drilling discharges do not contribute to the larger cause of offshore oil and gas exploration. State's Initial Brief at 23. Mobil's OCS exploration, however, includes exploratory drilling. The wastes from this drilling are what Mobil proposes to discharge into the ocean. Upon reviewing the record before me, I find that Mobil's proposed drilling discharges are directly associated with and further its proposed OCS exploration.[31]

Therefore, if Mobil's larger exploration activity at the site furthers the objectives or purposes of the CZMA, then Mobil's proposed discharges will indirectly further the objectives or purposes of the CZMA.[32] OCS exploration,

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30 *See, e.g.*, Decision in the Consistency Appeal of Ford S. Worthy, Jr., May 9, 1984.

31 The State argues that to share in the contribution of OCS exploration to the objectives or purposes of the CZMA, the discharges must be a necessary part of Mobil's proposed exploration. State's Initial Brief at 21, 24. Mobil first argues that the proposed activity is necessary to OCS exploration. Mobil's Initial Brief at 19. Mobil later argues that the proposed activity need only be associated with OCS exploration. Mobil's Final Brief at 7. Prior consistency appeal decisions shed little light on this issue. The Korea Drilling Decision speaks only of oil and gas exploration "activities." *See also* Texaco Decision at 5; Amoco Decision at 14; Chevron Decision at 22; Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, (Gulf Oil Decision), December 23, 1985, at 4. I find it unnecessary for the purposes of Element 1 to determine whether the activity is a necessary part of Mobil's exploration activity.

32 The scope of the appeal is dictated by the scope of the proposed project. *See* LILCO Decision at 7. In the LILCO Decision, the Long Island Lighting Company (LILCO), applied to the U.S. Army Corps of Engineers (Corps) for a permit to perform dredging and jetty maintenance activities in conjunction with the construction of the Shoreham Nuclear Power Station (SNPS). LILCO Decision

development and production activities are included within the objectives and purposes of the CZMA. *See, e.g.*, Korea Drilling Decision at 7; Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989, at 5. The Department of Energy (DOE) states that the project lies in "one of the most promising natural gas prospects on the OCS."[33] The Department of the Interior (DOI) states that development of the Manteo Area Block 467 could benefit the natural gas market of the southeastern United States.[34] Based upon a review of the record, I find that Mobil's exploration for natural gas resources at this site furthers one or more of the competing national objectives or purposes contained in §§ 302 or 303 of the CZMA.

I therefore find that Mobil's proposed discharge activity indirectly furthers one of the objectives or purposes of the CZMA. In Element 2 I will determine the extent of the contribution of the activity to the national interest prior to performing the required balancing.

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at 1. The Secretary determined, however, that since the SNPS was beyond the scope of the appeal, comments on the contribution of the SNPS to the national interest did not contribute to the findings of the Secretary. LILCO Decision at 14, n.10. In the Korea Drilling Decision, the Korea Drilling Company (KDC) applied to the EPA for an NPDES permit that would authorize its drillship to discharge drilling wastes into the Pacific Ocean in certain OCS tracts off the California coast. The Secretary determined that KDC's proposed activity would encourage competition and thus further the explortaion for and development of OCS resources. *See* Korea Drilling Decision at 9.

33 Letter from Robert H. Gentile, Assistant Secretary, Fossil Energy, Department of Energy, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, December 19, 1990 (DOE Comments).

34 Letter from David C. O'Neal, Assistant Secretary, Land and Miinerals Management, Department of the Interior, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, January 22, 1991 (DOI Comments).

2. *Element 2: The Activity's Individual and Cumulative Adverse Effects on the Coastal Zone are Outweighed by Its Contribution to the National Interest*

In order for the Appellant to meet this Element, I must find that the disputed activity, when performed separately or when its cumulative effects are considered, does not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest. 15 C.F.R. § 930.121(b). To perform the required balancing, I must first adequately identfy the proposed project's adverse effects on the natural resources or land and water uses of the coastal zone and its contribution to the national interest. *See* Texaco Decision at 6. As stated above, if the information in the record is inadequate, such that I cannot adequately identify the adverse effects or the contribution to the national interest, I will be unable to perform the weighing, and therefore unable to find for Mobil on this Element. *See* Anton Decision at 5, n.8.

I conclude that the information in the record is insufficient for me to adequately identfy the adverse coastal zone effects of the activity. Accordingly, I am unable to find for Mobil on Element 2 of Ground I.

a. *Adverse Effects on Coastal Resources and Uses*

In evaluating the adverse effects of the project on the resources of the coastal zone, I must consider the adverse effects of the project by itself and in combination with other past, present, or reasonably foreseeable activities affecting the coastal zone.[35] In this case, other activities

[35] *See* Chevron Decision at 24; Texaco Decision at 6; Gulf Oil Decision at 8. Given that the probability of a hydrocarbon discovery is estimated by the MMS to be less than ten percent, I find that development and production of such reserves is not reasonably foreseeable. In this case I will consider the cumulative effects of activities occurring during the drilling period. *See* Texaco Decision at 24.

include Mobil's activities not covered in its NPDES permit application such as discharges on the ocean floor,[36] accidents or improper conduct of an activity. *See* Chevron Decision at 24; Korea Drilling Decision at 10. Prior to examining effects of Mobil's proposed activity, however, I must first identify the fates[37] of the discharges. The fates of drilling discharges will depend on various physical, chemical and biological processes that serve to disperse or concentrate constituent elements of the discharges. *See* NRC 1983 Report at 49.

Fates of Mobil's Drilling Wastes

The extent of adverse impacts will depend in part on the concentration of the discharges as well as on the length of time of exposure to the discharges. *See* Mobil Exhibit 27 at 10-1. In this section I will examine information on the physical and chemical oceanography of the drill site area, in particular the effect of currents on the dispersion of the drilling wastes, both near the surface and near the seafloor.[38]

[36] The MMS has listed other activities associated with Mobil's marine discharge activities which are not covered in its NPDES permit application: placing and removing drillship mooring anchors; support vessel transpotration; physical presence of the drillship. MMS Comments at 37.

[37] *See, e.g.*, EPA, *Assessment of Environmental Fate and Effects of Discharges from Offshore Oil and Gas Operations*, (1985)(Mobil Exhibit 24). In general, the term "fates" refers to what happens to the discharges as they enter an ecosystem.

[38] The NRC has provided a framework for evaluating the adequacy of physical oceanography information. *See* NRC 1989 Report at 18-24. *See also* ESRP Report at 27-29.

Mobil plans to drill in a water depth of 2,690 feet. The ocean floor is a generally sloping terrain, marked with ridges and valleys. The physical environment at that location results from the interaction of the Gulf Stream, the Deep Western Boundary Current, the Slope Sea Gyre and Virginia coastal waters. A report prepared for Mobil on currents at Manteo Area Block 467, states that close to the maximum currents of about 5 knots are likely to occur near the site, and that high speed currents can be expected about 56% of the time.[39]

In its report to the Secretary of the Interior, the ESRP states that the local currents, upon which the fates of Mobil's discharges depend, are well-characterized for the Manteo site. ESRP Report at 28. The ESRP report also states that physical information in relation to these discharges is adequate. *Id.*

NMFS generally comments that the information on the physical and chemical oceanographic process in this area is inadequate and does not support the conclusions of Mobil or the Minerals Management Service (MMS).[40]

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39 Science Applications International Corp., *Characterization of Currents at Manteo Block 467 off Cape Hatteras, NC*, Draft Final Report (1990) (State Exhibit 27), at 1.

40 NMFS states that:

> [T]he very low adverse impact predictions may be inaccurate and unsubstantiated. Documentation that current structures (lateral, horizontal, and vertical components) are understood sufficiently to support the dispersion dilution scenario is needed.

Letter from Andreas Mager, Jr., Assistant Regional Director, Habitat Conservation Division, National Marine Fisheries Service, to Minerals Management Service, Department of the Interior, December 13, 1989 (NMFS Letter). NMFS states that certain conclusions reached in the DER regarding current patterns are not adequately supported and that the DER should either substantiate these conclusions or acknowledge that the conclusions are speculative. *Id.*

In particular, NMFS states that the concentration of marine organisms along thermal and salinity fronts raises the possibility that Gulf Stream hydrology may similarly concentrate discharges, and that Mobil has not adequately considered this issue. *Id.* NMFS also states that the relationship between ocean hydrology and fish migrations and concentration of larvae is not adequately described in the DER. *Id.*

Based upon a review of this information, I find that current movements near the site area are indeed complex and incompletely understood. I also find that many of the chemical and biological characteristics of the site area are influenced by the site's physical characteristics. Nevertheless, upon reviewing the record of this appeal, I find that the physical information in relation to Mobil's discharges is adequate. I am persuaded that Mobil's near-surface discharges will be rapidly diluted by the currents, thus reducing their impact. Furthermore, I find that effects from Mobil's near-surface discharges are most likely to be confined to exposures within a small area around the point of discharge. *See* NRC 1983 Report at 4.

As to the fates of the seafloor discharges, ten simulations were run using the Offshore Operators Committee (OOC) mud discharge model to estimate the distribution of these discharges.[41] One limitation of the simulation model, however, is that seafloor discharges (i.e., from the drill hole) are not normally modeled. OOC Introduction at N-6. Furthermore, the scientists who performed the simulation modeling stated that "some artifice was necessary to simulate the possible behavior of bottom discharges. We do not know how accurate those simulations are." *Id.* One

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41 Introduction of the Offshore Operators Committee Simulation Modeling for the Manteo Prospect taken from Mobil's Draft Plan of Exploration (OOC Introduction). *See* FER at Appendix L.

conclusion reached based upon the simulation modeling is that "[t]he average thickness of cuttings inside the 20 m circle [around the drill site] was 77 cm for minimum currents at the bottom, and 50 cm for maximum currents at the bottom."[42] The same study also concludes that "a small area shows quite heavy concentrations of cuttings, up to 70 cm thick within 10 m of the discharge well head on the bottom, however there is at most 0.3 km^2 covered with drilling mud and cuttings to a depth greater than 0.1 cm."[43] *Id.* at 28. Based upon a review of the record, I find that most of the seafloor discharges will be distributed in the immediate vicinity of the project activities.

Possibility of Unpermitted Discharges

In order to fully identify and evaluate the cumulative impacts of Mobil's proposed activity, I must consider any discharges outside of the scope of the proposed NPDES permit. I will examine, among other things, any evidence of Mobil's record of unplanned discharges at other sites, as well as any evidence of the possibility of other unplanned or unpermitted events, such as those associated with high currents and unpredictable weather at the site. These discharges could affect the resources of the State's coastal zone. *See* Korea Drilling Decision at 15.

The record contains relevant information on the likelihood that Mobil will accidentally discharge in excess of NPDES permit conditions. First, as to the proposed limits

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42 Brandsma, *Simulation of Benthic Accumulations of Mud and Cuttings Discharged from Mobil Oil Corporation Well, Manteo Area, Block 467, Cape Hatteras, North Carolina*, November 28, 1989, at 27. *See* FER at Appendix L.

43 MMS reports that the drill cuttings are expected to accumulate a maximum of 77 centimeters within 10 meters of the drill site. FER at IV-64.

on cadmium and mercury discharge concentrations, Mobil states: "Abundant data demonstrate that the EPA's proposed permit condition establishing effluent limitations equal to 1 mg/kg each of the cadmium and mercury in the whole drilling fluid would present potentially serious compliance problems for Mobil." Mobil Exhibit 18 at 58. Mobil also states that the proposed cadmium and mercury permit limits "cannot be consistently met." *Id.* Given these statements, I find that it is possible that Mobil will discharge cadmium and mercury in excess of the proposed NPDES permit conditions. Second, the record indicates that for an OCS operation offshore Alabama, Mobil paid a $2 million settlement and acknowledged that Mobil employees discharged in violation of NPDES permit conditions.[44] I therefore find that it is possible that Mobil could deviate from other NPDES permit conditions, in addition to the proposed cadmium and mercury permit limits.

I will now examine the possibility of unplanned discharges associated with high currents and unpredictable weather at the site. MMS states that "the flow of the Gulf Stream and the potential for the occurrence of rapidly forming storms offshore North Carolina could create extreme and hazardous oceanographic and weather conditions in the area." FER at IV-8. Mobil's drillship would be able to remain in the drilling mode in up to 3.5 knots of current. FER at IV-10. However, close to the maximum currents of about 5 knots are likely to occur near the site, and high speed currents can be expected about 56% of the time.[45] Upon reviewing the record, I find that there may

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44 Settlement Agreement between the State of Alabama and Mobil (State Exhibit 29).

45 D. Bolze, *The Ecological Effects of Outer Continental Shelf Oil and Gas Development—Both Offshore and in the Coastal Zone*, (1989) (State Exhibit 27), at 1.

be unplanned discharges during emergency disconnects of the well.

MMS contends that the risk of excessive discharges occurring and resulting in substantial adverse effects on the natural resources of the State's coastal zone is insignificant. MMS Comments at 30-31. In particular, MMS concludes that the procedures for an emergency disconnect of the well assure insignificant impacts from excessive discharges. *See* MMS Comments at 34-36. I am unpersuaded, however, by the comments of MMS. I have found that unplanned discharges are possible. I now find that information on the possible extent of discharges outside of the scope of the NPDES permit is inadequate for me to assess their risk.

Nature of the Discharges

Mobil's proposed wastes can have physical and chemical effects on living organisms, including the State's fisheries. Physical effects can result from sedimentation, increased turbidity and substrate alteration. Chemical effects include toxicity and bioaccumulation of metals and organic compounds. *See* NRC 1983 Report at 75.

Mobil's wastes to be covered under the proposed NPDES permit include drilling fluids (muds), drill cuttings, sanitary wastes, domestic wastes, deck drainage, produced water, produced sand, and other miscellaneous wastes. Mobil estimates that its wastes will include small amounts of such metals as arsenic, barium, chromium, cadmium, copper, mercury, nickel, lead and zinc. Mobil's NPDES Permit Application. The record discloses that the permit would prohibit the discharge of diesel oil, limit mercury and cadmium discharge concentrations of 1 mg/kg, prohibit free oil in drilling fluids and cuttings, limit oil and grease discharge concentrations to 72 and 48 mg/l daily

maximum and daily average, respectively, prohibit free oil in produced waters, and prohibit free oil in all other discharges. Mobil Exhibit 27 at 10-9. As previously indicated, however, Mobil's cadmium and mercury discharges may vary because of the varying concentrations of barite in drilling fluids and because of metal contributions from the formation into which it would drill. Mobil Exhibit 18 at 58. Mobil's drilling fluid may also contain paraformaldehyde, a biocide. *See* Mobil's NPDES Permit Application.

Mobil also plans to discharge wastes near the seafloor during the initial phase of the drilling operation, prior to setting the riser. There is little information in the record, however, on the composition of these wastes since these wastes would not be covered by the proposed NPDES permit. Again, I note that much of Mobil's information in the record only examines possible impacts from discharges within the scope of an NPDES permit. My analysis of the cumulative effects of Mobil's permitted discharges includes the effects of these wastes. Moreover, it is likely that these wastes will affect the benthic environment which will in turn affect the State's coastal fisheries.

Mobil claims that the drilling fluids to be used have a low toxicity, and that studies have shown that drilling fluids discharged into the ocean disperse rapidly into nontoxic concentrations. Mobil's Final Brief at 31. The State challenges Mobil's claim that the drilling fluids have a low toxicity. Specifically, the State asserts that the use of *Fundulus heteroclitus* is unsuitable for determining toxicity of drilling fluids to oceanic fish or invertabrates since, unlike oceanic species, *Fundulus* eggs, larvae, and adults are normally associated with high turbidities and sedimentation rates. State Objection Letter. The State indicated that toxicity information must be provided for species

adapted to the oceanic environmental conditions found at the proposed drill site. *Id.* While I am concerned with the toxicity of the proposed wastes upon the resources near the proposed drill site,[46] bioassay tests are at least useful in identifying the relative toxicities of components. *See* NRC 1983 Report at 76. Thus, I find that Mobil's proposed water-based drilling fluids are generally less toxic than oil-based drilling wastes.

I am unable, however, to extrapolate from the evidence in the record that Mobil's wastes are not toxic to organisms found at the drill site. First, the toxicity of the discharges will vary depending upon the organisms tested and the life cycle stage of the organism. I am persuaded that the drill site area contains sensitive larval species of commercially important fish. Second, Mobil offers little discussion of the effects of paraformaldehyde, a nonpersistent biocide, in its discharges. *See* State Exhibit 27 at 7. While paraformaldehyde is less toxic than chlorinated phenol biocides, the carcinogenicity of formaldehyde in solution is unknown.[47] *See* NRC 1983 Report at 82. Third, there is little discussion of the effects of unplanned, but reasonably foreseeable discharges. Finally, there is too little information on the ecological and food web effects of

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[46] In its 1983 report, the NRC provided considerations in using available information in assessing the potential effects of drilling discharges. The NRC reported that most information about the effects of drilling fluids on marine organisms comes from laboratory experiments, and that the organisms most frequently used in these tests have been coastal and estuarine species readily available for testing and easily maintained in the laboratory. NRC 1983 Report at 129. The NRC also stated that direct measurement of the effects of drilling fluids in the field is inherently more rigorous than models and laboratory toxicity tests. *See Id.* at 133.

[47] Paraformaldehyde depolymerizes to formaldehyde upon contact with water. NRC 1983 Report at 82.

Mobil's discharges for me to conclude that Mobil's discharges are non-toxic.[48]

Mobil's wastes may contain hydrocarbons and heavy metals, which are discharges of major concern. *See* Mobil Exhibit 27 at 10-2, 10-4. While Mobil's proposed discharges would not contain diesel oil, Mobil's wastes could contain other hydrocarbons such as benzene. Benzene is a carcinogen. Heavy metals present in Mobil's discharges may affect resources through bioaccumulation. The EPA examined biological transport processes, including bioaccumulation. *See* EPA's *Assessment of Environmental Fate and Effects of Discharges from Offshore Oil and Gas Operations,* (EPA 444/4-85-00), (Mobil Exhibit 24) at

[Figure 2. Conceptual Epipelagic Food Web for Tropical-Subtropical Waters Omitted in Printing]

3-64 - 3-84. I am persuaded that the information in the record is inadequate for me to conclude that there is a low potential for bioaccumulation. While several variables determine the bioavailability of metals,[49] Petrazzuolo (1983) states that due to the persistence of metals, the high toxicity of some metals, the absence of laboratory data on mercury, and the inability to correlate filed [sic] and laboratory measures, a finding of no significant potential effect is inappropriate at this time. Mobil Exhibit 27 at 5-24. Mobil's claim that mercury and cadmium found in drilling fluid discharges predominantely occur in insoluble

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[48] Mobil's POE contains a diagram of the relevant food web, with the omission of humans as the highest trophic level consumers. *See* Figure 2.

[49] These variables depend on both the compounds in which the metals are found and on the size, type and feeding behavior of the organism involved. *See* NRC 1983 Report at 109-110; Mobil Exhibit 27 at 5-23.

forms, also leads me to conclude that some mercury and cadmium will occur in soluble, and therefore potentially toxic and bioavailable, forms. *See* Mobil Exhibit 18 at 66-67. Finally, I note that Mobil's discharges of lead will add to the already elevated levels of lead (up to 17 ppm) in the environment near the Manteo area. *See* Mobil's Final Ocean Discharge Criteria Evaluation Report, December 8, 1989 (Mobil Exhibit 19) at 67. Given that the oceans around Mobil's proposed activity will be harvested for human consumption, I find that the extent of adverse effects of even small amounts of these chemicals entering the food web and affecting the food supply could be great.[50]

Effects on Biological Resources

In this section I will examine the risk of individual and cumulative adverse effects from the proposed activity on the affected biological resources and uses of those resources.[51]

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50 The ESRP states that there should be a better understanding of the possibilities of contamination of food supplies by OCS activities for all the large predators. *See* ESRP Report at 47. Mobil discounts the effects of its proposed wastes entering the food supply by stating that at least one of its proposed waste components, bentonite clay, is used in cosmetics and as a food additive. Mobil's POE, vol. 1 at B17-21. While bentonite clay may be an allowable food additive, other of Mobil's proposed wastes, such as heavy metals and hydrocarbons, may not.

51 The State has asserted that Mobil has underestimated the biological importance of The Point. NMFS has characterized the natural resources found in Block 467 as unique. NMFS Letter. NMFS also states that the biological significance and later potential for adverse impacts is severely underestimated. *Id.* In general, the ESRP has stated that there needs to be a study of the ecological relationship between The Point's unusual biological resources and its physical properties. *See* ESRP Report at 36-37, 47.

Fish Resources:

One of the East Coast's most important commercial and recreational fisheries is located in the waters overlying the proposed drill site.[52] FER at III-83. The proposed drill site area serves as an important migratory pathway and feeding habitat for pelagic fishes. Yellowfin, bluefin, and bigeye tuna, white and blue marlin, sailfish, swordfish, wahoo, and dolphin are caught there by North Carolina fishermen.[53] In addition, many target and prey species are believed to spawn near the western boundary of the Gulf Stream. Thus, the proposed drill site, even though it is located outside of the State's coastal zone, is situated such that an important food source for North Carolinians would be exposed to Mobil's proposed wastes.[54]

Mobil states that the species composition found at the drill site area is representative of the overall areal population, and that the species found were generally similar to those observed in previous collections conducted during the spring and fall months off the South Atlantic Bight and in the eastern Gulf of Mexico. *See* Mobil's Final Brief at 30-34. Upon reviewing the record, I find that

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52 The first portion of the State's proposed study is an investigation of larval and juvenile abundance and distribution in the vicinity of the Mobil project.

53 The Secretary's Exxon SRU Decision at 7-10 interpreted Element 2 to include adverse effects on coastal uses. In that case, Exxon's proposed OCS POE affected a thresher shark fishery important to California fishermen.

54 In addition to citing coastal uses of The Point, the State argues that the area serves as spawning habitat for species that are important to North Carolina fisheries, including both prey and target species (menhaden, spot, croaker and flounder) that migrate into North Carolina's coastal waters. Memorandum from Bill Hogarth, Director, North Carolina Division of Marine Fisheries, to Roger Schecter, Director, North Carolina Division of Coastal Management, May 21, 1990, at 2, Attachment 6 to State Objection Letter.

while the species composition may not be unique, there is an unusual abundance of fish resources found near the drill site area, and that the area serves as an important migratory pathway, feeding habitat and spawning ground for several commercially significant species.

As to the possible effects on fishery resources, MMS states:

> [I]mpacts on fish resources may result from the effects of [the] discharge of muds and cuttings [and] treated sanitary and domestic waste. . . . Individuals may be subject to sublethal effects *before* dispersion and dilution of drilling mud [and] other waste discharges.

FER at IV-216 (emphasis added). In essence, the fishery resources, upon which the State's commercial and recreational fishing industries depend, may be exposed to and potentially affected by Mobil's wastes, with individual fish possibly subjected to "sublethal effects." [55]

MMS concludes that the expected impacts of the proposed discharges on commercial and recreational fishing would be low-level and temporary in nature. MMS Comments at 21. The record lacks information, however, on the marketability of fish which may have been exposed to Mobil's wastes and subjected to sublethal effects.[56]

MMS also concludes that under its "worst case" analysis of maximum level of impacts on fish resources, the anticipated effects would be minor and indistinguishable from natural background variability. The worst case analysis, however, has limited usefulness to my analysis for four

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55 *See* FER at IV-213-219 for a discussion of potential effects on the State's fisheries resources.

56 *See infra* at 35 for a discussion of other potential socioeconomic effects.

reasons. First, as stated above, resources may be affected by Mobil's wastes *before* dispersion. Second, the analysis does not fully examine ecological effects. Third, the conclusions on natural variability may be flawed.[57] Fourth, the analysis does not fully account for cumulative impacts.

In commenting on this appeal, the National Marine Fisheries Service (NMFS) identified informational concerns regarding fisheries studies and stated that additional studies and information were needed. NMFS Comments. In comments on the DOI's Draft Environmental Report (DER)[58] on Proposed Exploratory Drilling offshore North Carolina, NMFS stated:

> The DER does not adequately address fishery issues. Discussions on effects of spills or accidents on eggs, larvae, and food organisms; recreational and commercial fishing activities; potential alterations of migratory patterns of important pelagic fishes; occurrence of latent fisheries resources; habitats; and fisheries operations in the project area are inadequate.

NMFS Letter. NMFS states that "many of the finfish that inhabit the site as eggs and larvae are not discussed. More information on distribution, life history aspects, and fish-

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57 The ESRP states that the DOI decision documents are flawed in their discussion of the significance of natural variabiilty. *See* ESRP Report at 45-46. The ESRP states:

> Purging from the decision documents the unjustified argument that variable ecological resources and variable driving forces do not deserve the same level of protection from environmental impacts as more invariant parameters is needed to render the interpretations and conclusions adequately defensible.

ESRP Report at 46.

58 Given that NMFS' comments on this appeal were forwarded after the completion of the FER, one inference that can be drawn is that its prior concerns with the DER remain unresolved.

eries, should be provided on tunas, dolphin, wahoo, and marlins." *Id.* The NMFS comments continue:

> The uniqueness of the Cape Hatteras area as a faunal mixing zone is not adequately addressed. The drill site is located near [an area] known for its value to migrating pelagic fishes. The area also is a critical feed site for tunas.

Id. NMFS also states that the "[e]cology, life history, and habitat requirements of epipelagic fishes are not well known. Accordingly there is insufficient basis for most of the assumptions made in the DER regarding potential impacts." *Id.*

Upon reviewing the information in the record of this appeal, I find that I am unable to adequately assess the risk of adverse impacts to fish resources. Consequently, I am unable to adequately identify the adverse effects on fish resources. While I previously found that Mobil's studies adequately predict a rapid dispersion of wastes near the surface, I was unable to find that Mobil's wastes will have a low toxicity. Furthermore, the State's fisheries may be subjected to sublethal effects *before* dispersion and dilution of Mobil's wastes. Finally, I find that the fish resources at the proposed drill site are sufficiently rich, and their ecology sufficiently important, to require additional site-specific information.

Benthic Communities:

Benthic communities include, among other things, both infaunal and epifaunal organisms. Densities of infauna and epifauna near the Mobil drill site have been found to be unusually high.[59] The North Carolina Division of

[59] The third portion of the State's proposed four-part fisheries study is to measure the effects of drilling waste deposition on bottom organisms.

Marine Fisheries has stated that Block 467 has the highest benthic infauna population of any deep water site on the east coast. The State argues:

> The benthic assemblages found near the drill site are unique on the western North Atlantic slope. While species diversity is low, the benthic infauna exhibit extremely high biomass and species abundances. . . . The concentrations of demersal fishes are larger than usual for this water depth.

Summary and Assessment of Ad Hoc Live Bottom Committee (State Exhibit 23) at 4. Commercially harvested demersal fishes prey on infaunal organisms.[60] *See* FER at III-82, III-101-104, 180-183. Mobil argues that its Live Bottom Survey shows that the benthic organisms are commonly occurring and widely distributed. Mobil's Initial Brief at 42. Upon reviewing the record, I find that the benthic community near the drill site is unusual for its high biomass and productivity. Moreover, I find that benthic communities are directly linked to the food web supporting the State's fisheries.

Potential damage to benthic and infaunal communities may be physical and/or chemical.[61] NRC 1983 Report

[60] Mobil's sweeping statement in its Final Brief that "there is absolutely no indication that any coastal fishes or other coastal wildlife resources utilize the benthic habitat, benthic food sources, or benthic-derived energy in any form" is belied by statements in the FER and the EA. *Compare* Mobil's Final Brief at 29 *with* FER at III-82, III-101-104, 180-183.

[61] Upon reviewing existing information on the fates and effects of drilling fluids and cuttings on the OCS, the NRC states that "[t]he postdepositional fates of drilling fluids and the recovery of altered communities are the processes for which data are most limited and predictions most tenuous." NRC 1983 Report at 136. The NRC advises caution in extrapolating observations of adverse effects from one region to another. *See Id.* at 137.

at 5. Factors influencing damage to benthic communities include the type and quantity of drilling discharges, the hydrographic conditions at the time of discharge, and the height above the bottom of the discharges. FER at IV-61. The effects also depend on how quickly the benthic community recovers, not only in total density and biomass, but also in the composition and structure of the community. NRC 1983 Report at 135. Benthic communities may also be damaged from the placing and removal of drillship mooring anchors. *See* MMS Comments at 37-38.

I will evaluate the benthic impact of Mobil's discharges as well as the emplacement and removal of drillship mooring anchors on the benthic environment. Mobil's drilling plans include both near-surface and seafloor discharges. Based upon a review of the information in the administrative record, I find that there is a low likelihood that the near-surface discharges will have a measurable adverse impact on benthic communities given the water depth and the current movements. Mobil's drilling plans, however, also include seafloor discharges and anchor placement. As previously stated, Mobil has performed simulation modeling of the deposition of seafloor discharges, for which I found that the seafloor discharges will be distributed in the immediate vicinity of the drill site.

MMS comments that the only expected negative effects of the proposed discharges would be from the deposition of drilling muds and cuttings directly on the seafloor during the drilling of the initial portion of the well. MMS Comments at 17. In its FER, MMS states that the major effect of the release of drilling muds and cuttings directly to the seafloor will be to bury and kill local benthic organisms. *See* FER at IV-211; MMS Environmental Assessment of Exploration Plan for Manteo Area Block 467 (EA), Appendix E at E-4. Upon reviewing the record, I find that

the major short term effect of the deposition of seafloor drilling discharges will be to bury and kill benthic organisms in the immediate vicinity of the drill site. I also find, however, that possible sublethal impacts include altered burrowing behavior, chemosensory responses, alterations in embryological or larval development, depressed feeding, decreased food assimiliation and growth efficiency, and altered respiration and nitrogen excretion rates. *See* Mobil Exhibit 27 at 10-6. Thus, I find that in the immediate vicinity of Mobil's drill site, Mobil's proposed wastes may either destroy or poison a food source for part of the State's demersal fishery resources.[62]

As to the period of the diminishment in value of these natural resources, since I am unable to conclude that the benthic community would be accustomed to burial of the magnitude envisioned in the modeling studies, I decline to accept Mobil's argument that the area will become rapidly repopulated. Rather, as indicated in the FER, I find that recovery of these deep sea fauna could take several years and the recolonizing community may be significantly different from the pre-drilling one.[63] FER at IV-212.

MMS has also stated that the emplacement and removal of drillship mooring anchors will cause localized destruction of benthic organisms. MMS Comments at 38. I

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[62] In discussing the effects of Mobil's proposed wastes on benthic communities, Mobil discounts the effects on the food supply by stating: "The primary drilling fluid to be discharged at the sea floor is simply prehydrated bentonite clay (see Appendix I-1). Bentonite clay is a naturally-occurring material that is used in cosmetics and as a food additive." Mobil's POE, vol. 1 at B17-21.

[63] The ESRP has indicated that the question of the recovery rate of the benthic community from the effects of Mobil's proposed wastes is unanswered. *See* ESRP Report at 48-49. The NRC states that benthic recovery rates from complete annihilation can be many years on the continental slope. NRC 1983 Report at 136.

agree with the MMS' conclusion, however, upon review of the record, I find that the possible extent of this damage should be minimal.

Finally, NMFS and the ESRP have raised informational concerns on the possible impacts of Mobil's proposed waste discharges on the ecology of the benthic community. NMFS comments that the relationship between the high benthic infauna population and the proposed action should be addressed. *See* NMFS Letter. The ESRP states that a survey of the seafloor in the vicinity of the Manteo Unit should be completed prior to initiation of exploratory drilling, and that "the limited knowledge of the geographical extent of the unusual benthic community around the Manteo drill site is inadequate to describe what fraction of this system would be at risk during deposition of muds and cuttings." ESRP Report at 39. The ESRP states that this benthic survey should identify the geographic extent and degree of uniqueness of the unusual benthic community. ESRP Report at 45. I agree with NMFS and the ESRP. I find that while the record identifies certain adverse effects, I am unable to adequately assess other ecological impacts of Mobil's proposed action on the benthic communities.

In summary, I found that the benthic communities are directly linked to the food web supporting the State's fisheries. While I found that the effects of Mobil's near surface discharges on the benthic environment will be minimal, I found that Mobil's seafloor discharges are likely to damage or destroy benthic communities in the immediate vicinity of Mobil's proposed drill site. I also found that the recovery period for this richly populated area could be several years. Finally, I found that there is presently inadequate information for me to adequately assess other ecological impacts on the benthic communities.

Plankton and Near Surface Resources:

The near surface environment includes a *Sargassum* community as well as planktonic and nektonic organisms.[64] The *Sargassum* communities provide habitat, food and protection to juvenile finfish and endangered sea turtles, and are closely connected to the State's fisheries. Tuna and dolphin feed on juvenile fish, crabs, and shrimp which occur in the *Sargassum* community. Mobil Exhibit 19 and 36. Phytoplankton and zooplankton constitute a major portion of the food base for pelagic food webs. Mobil Exhibit 27 at 6-1. In addition, most fish have planktonic eggs and larvae. Mobil Exhibit 19 at 28.

Mobil claims that the types of *Sargassum* which are found near the drill site are found over a very wide ocean area. Mobil's Initial Brief at 43; Mobil's Final Brief at 32. Mobil claims that due to the rapid dispersion of the discharges and the naturally short regeneration times of planktonic species, there will be minimal short term impacts. Mobil's Final Brief at 32.

Even though the proposed discharges would be shunted at least 25 feet below the surface of the water and the expected upper limit of the discharge plume is approximately 30 feet below the surface, near surface organisms, including plankton, could be affected by Mobil's drilling discharges. *See* FER at IV-207. If plankton come in contact with drilling discharges, the photosynthetic production of phytoplankton could be reduced due to in-

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[64] *See* FER III-65—III-70 for a summary of information collected on the *Sargassum* community known to occur in the area of the proposed activity. The second part of the State's proposed four-part fisheries study is to gather additional information centered on the *Sargassum* community. The State has designed the study to investigate the abundance and size of *Sargassum* rafts near Block 467 and summarize information on the *Sargassum* community as a source of food for various fish species.

creased turbidity of the water; filter feeding and respiratory functions could be harmed by contact with particulates; and there may be lethal or sublethal effects. *Id.* These effects would vary depending on the currents. The FER concludes, however, that:

> While it is not known with certainty whether the availability of phytoplankton as a food source for zooplankton grazers eventually affects the abundance or productivity of major fisheries, drilling discharges are not expected to result in measurable impacts on populations of phytoplankton or on the marine food web.

FER at IV-207; *see also* EA at 51. MMS also states that its "worst case" analysis looked at the possibility of the proposed discharges contacting the "sensitive" *Sargassum* communities. MMS Comments at 51. MMS concluded that there would be no anticipated measurable effects on the *Sargassum* or associated organisms, including fish, species fed on by fish, and marine turtles. MMS Comments at 51. MMS also states that any effects on fish eggs and larvae would be minimized due to the proposed shunting of the discharges 25 feet below the sea surface. MMS Comments at 20.

In addition to expressing the view that there is inadequate information on the ecology of the drill site, NMFS states that "the DER fails to address adequately the concentration of marine fauna along thermal and salinity fronts and the potential consequence of oil spills and other toxic releases along these fronts." NMFS Letter.

The ESRP states that ecological information on the functioning of the *Sargassum* community is inadequate. *See* ESRP Report at 35-38. In addition, the ESRP states that what is needed is an "enhanced understanding of the proc-

esses that control the function and production of this *Sargassum* system." ESRP Report at 38.

Based upon a review of the information contained in the record, I find that for the purposes of this appeal, there is inadequate information on the effects of the proposed activity on near-surface and planktonic resources. While I accept the conclusions that the near surface discharges will be rapidly dispersed, given the potential ecological importance of the *Sargassum* community to the State's fisheries, and the presence of sensitive larval forms of the State's fisheries, I find that the potential for significant impacts is great enough to merit further study before an informed decision can be made.

Marine Mammals:

There are several species of cetaceans and pinnipeds which can be found in the waters off North Carolina, and which can be grouped into regularly occurring species, migratory species, and rare or unknown-occurrence species.[65] *See* Mobil Exhibit 27 at 6-24. As with many of the State's coastal resources, the range of marine mammals may include both State and Federal waters. Several species are endangered or threatened or recognized as species of undetermined status by the State and intra-scientific community. Mobil Exhibit 27 at 6-25. The record contains biological summaries for species of marine mammals that frequent this area. *See* FER at III-192 - III-222; Mobil Exhibit 18 at 47-49.

The following possible adverse effects have been disclosed in the record. Underwater noise generated by drilling ac-

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[65] In its objection letter the State indicated that it wanted information on use of the site by marine mammals, specifically identifying numbers of individuals, numbers of species, and activities by species at the site.

tivities could affect cetaceans. FER at IV-220, 225. Vessel and aircraft traffic could produce startle reactions in cetaceans. FER at IV-222. Certain wastes may produce sublethal effects on cetaceans. *See* FER at IV-223-224. Turbidity could affect the sight and echolocation capabilities of some marine mammals if they swim within the discharge plume. Prey species of cetaceans could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64. The FER also points out, however, that only predators in a weakened physical state would experience any effects if they were unable to move to a nearby area where prey is obtainable. FER at IV-64.

In spite of the evidence suggesting possible harassment of, and injury to, marine mammals, Federal agencies offered few other comments on the proposed project's effects on marine mammals. In particular, NMFS, the Federal agency with jurisdiction over certain marine mammals, provided few specific comments on the need for information on marine mammals. MMS concluded that the level of impacts on marine mammals is considered to be very low. FER at IV-224, 227.

After reviewing the information in the record on the effets of the proposed project on marine mammals, I find that the information is sufficient for the purposes of this appeal and that the individual and cumulative effects of the proposed project will be minimal. In assessing the risk of possible injury to the endangered and threatened marine mammal population, I note that while the extent of the harm could be high to the marine mammals' diminished numbers, the likelihood of damage will be low due to the rapid dilution of near-surface wastes and the temporary nature of the drilling activity. I find that any harassment of marine mammals is likely to be temporary.

In making these findings I note that NMFS has expressed few specific concerns as to the effects of the proposed project on marine mammals.

Sea Turtles:

Five species of endangered or threatened sea turtles are found within the coastal and offshore marine habitats of North Carolina.[66] *See* FER at III-222-237; Mobil Exhibit 18 at 49-52. The endangered species are the Kemp's ridley (*Lepidochelys kempi*), hawksbill (*Eretomochelys imbricata*), and leatherback turtle (*Dermochelys coriacea*). The green turtle (*Chelonia mydas*) and loggerhead turtle (*Caretta caretta*) are classified as threatened. FER at III-222.

Potential impacts to sea turtles include underwater noises, vessel and aircraft traffic, drilling discharges and hydrocarbon releases. *See* FER at IV-229-231. Juvenile green and loggerhead turtles, and possibly those of other species, could be exposed to Mobil's wastes. *See* EA at E-8. In addition, prey species of sea turtles could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64.

Mobil argues, however, that the proposed activity is expected to have few impacts on turtles in the area. Mobil states that the drilling would not alter natural currents and would not disrupt the *Sargassum* mats which provide habitat to juvenile turtles. Mobile Exhibit 18 at 51. Mobil states that sea turtles can easily avoid ships and

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[66] In its objection letter the State indicated that it wanted information on use of the site by sea turtles. Specifically, the State wants information on numbers of individuals, numbers of species, and activities by species at the site.

that the turtles will be protected by NPDES permit conditions, including subsurface shunting of discharges. *Id.*

MMS states that due to the primarily inshore distribution of marine turtles during the proposed drilling period, the impacts of the proposed project are likely to be minimal. *See* FER at IV-231. Planktonic prey species such as jellyfish are unlikely to be displaced by the discharges. FER at IV-230. A temporary increase in water turbidity could, however, affect a turtle's ability to detect prey. *Id.* MMS based its conclusions principally on the limited areal extent and duration of the discharge plume. *See* EA at F-8.

Other Federal agencies offered few other comments on the proposed project's effects on sea turtles. In particular, NMFS, the Federal agency with jurisdiction over endangered seat turtles, provided few specific comments on the need for information on sea turtles.

The ESRP concludes that the ecological information on the *Sargassum* community as habitat for juvenile sea turtles is inadequate for all phases of oil and gas resource exploitation. *See* ESRP Report at 8, 37, 48. The ESRP states that "knowledge of the spatial and temporal abundance of hatchling sea turtles in the *Sargassum* community of the western wall of the Gulf Stream is inadequate to evaluate the risks of oil and gas activities on these endangered and threatened species." ESRP Report at 37.

After reviewing the information in the record on the effects of the proposed project on sea turtles, however, I find that the information is sufficient for the purposes of this appeal and that the individual and cumulative effects of the proposed project will be minimal. In assessing the risk of possible damage to the endangered and threatened sea turtle population, I note that while the extent of the harm could be high to the turtles' diminished

numbers, the likelihood of damage will be low because of the rapid dispersal of near surface discharges and the primarily inshore distribution of sea turtles during the drilling period. In making these findings I also note that NMFS has expressed no specific concerns as to the effects of the proposed project on endangered or threatened sea turtles.

Birds:

The Manteo area is used as a feeding ground by many resident and migratory species of seabirds which also frequent the State's coastal zone. The waters along the western edge of the Gulf Stream off Cape Hatteras are an important feeding area for several species. MMS indicates that the birds identified in the FER constitute an important ecological, economic, and aesthetic resource within North Carolina's coastal zone. *See* FER III-238. Some of the species are either endangered or threatened. The cahow (endangered) may be found on the North Carolina OCS. Mobil Exhibit 27 at 6-28. Coastal endangered and threatened species that may be present in the project area include the peregrine falcon (endangered), bald eagle (endangered), piping plover (threatened), and the roseate tern (threatened). Mobil Exhibit 27 at 6-28.

The Fish and Wildlife Service (FWS) has stated that it is concerned about the potential indirect impacts of exploratory drilling on seabirds. Memorandum from Regional Director, FWS, Atlanta, to MMS Regional Director, Atlantic OCS Region, December 22, 1989, (Attachment Four to Mobil Exhibit 18). Of particular concern to the FWS is that the only known concentration of the rare black-capped petrel (*Pterodroma hasitata*) at sea occurs specifically in and around the drilling site, with numbers peaking in May, August, and late December through early

January. *Id.* The FWS also stated that black-capped petrel specimens have had high levels of mercury relative to other seabird species collected within the lease sale area. *Id.* The FWS recommended the establishment of a monitoring program.

In its FER, MMS identified the following possible adverse effects on birds. Birds could experience startle reactions from aircraft noise and vessel traffic. FER at IV-233. Specifically, since the bald eagle and piping plover are known to nest during the period proposed for exploration, aircraft noise between the drill site and the Michael J. Smith Field in Beaufort could cause adults to abandon the nest. FER at IV-234. MMS concluded, however, that this possible effect is unlikely given that, on the average, there will only be two aircraft flights per day. *Id.* MMS also states that there is no evidence that the helicopter flights will impinge on critical feeding areas. *Id.* As to possible effects from drilling muds and cuttings, MMS concluded that direct contact with, or contamination by, muds and cuttings are not considered likely for the Bermuda petrel, roseate tern, or other endangered species. *Id.* However, prey species of marine birds could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64.

Based on the evidence in the record, I find that for the purposes of this appeal there is adequate information on the possible effects of Mobil's proposed activity on birds, an important ecological, economic, and aesthetic resource within North Carolina's coastal zone. In considering the risk of potential impacts upon birds, I find that the individual and cumulative impacts of Mobil's proposed activity on birds will be minimal. In particular, I note that while the impacts on endangered or threatened species

could be great given their diminished numbers, the likelihood of impacts will be small given the nature and duration of possible impacts.

Air Quality

Activities associated with the drilling activity at the time of Mobil's waste discharges will emit air pollutants. *See* FER at IV-205. Upon reviewing the information in the record, however, I find that the information is adequate for me to conclude that there will not be any significant impacts (including cumulative impacts) on the State's air quality.

Water Quality

Mobil's proposed activity will have individual and cumulative effects on water quality near the drill site. Mobil claims, however, that its discharge activity would satisfy North Carolina's water quality criteria within 100 meters from the point of discharge, and that there would be no impact on the water quality of the State's coastal zone. Mobil's Initial Brief at 44; Mobil's Final Brief at 32. The State disputes Mobil's claims on water quality. J. Trevor Clements of the State DEM found that Mobil's Water Quality Table incorrectly lists five State Water Quality Concentration Limits. The State also argues that the Water Quality Table calculations are inadequate. State's Final Brief at 18. Furthermore, the State also points to the EPA draft 403(c) report to indicate that there are projected to be five violations of the State's water quality standards during Mobil's proposed final mud dump event.

MMS states that the effect of drilling discharges on offshore water quality has been the subject of numerous field monitoring programs. MMS Comments at 13. MMS

states that the expected effects of drilling effluent on water quality are short-term, minor, and that water quality parameters are anticipated to return to background concentrations within a few hundred meters of the point of discharge. MMS Comments at 15. MMS predicts that there will be no impact on water quality of the State's coastal zone. Other agencies offered few specific comments on the proposed project's effects on water quality.

Upon reviewing the information in the record, I find that the information is adequate for me to conclude that there will be no significant impacts (including cumulative impacts) on the State's water quality, given the location of the activity and the dynamic current regime.

Socioeconomic Effects

Having previously considered the effects of the proposed project on the resources of the coastal zone which in turn affect the coastal uses,[67] in this section I will focus on other possible adverse effects of the proposed project on uses of the State's coastal zone.[68] Important economic activities in the State's coastal zone include agriculture, tourism, recreation, forestry, and commercial fishing. FER at III-313-315.

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[67] Natural resource damage valuation is based in part on the value of the uses of those resources. *See, e.g.*, Oil Pollution Act § 1006(d), 33 U.S.C. § 2706(d).

[68] The MMS states that North Carolinians living in eastern North Carolina in general have "fewer job opportunities, greater unemployment, higher levels of dependency, and lower incomes than North Carolinians living elsewhere in the State." FER at III-297. I will consider these comments when assessing the extent to which Mobil's proposed project furthers the national interest in economic development.

The primary coastal use at issue in this case is the commercial and recreational fishing industry.[69] The proposed exploration area contains important concentrations of epipelagic, bluewater fish and The Point is one of the most productive offshore fishing grounds along the east coast. *See* FER at III-83. Over the year, The Point is the most frequently and intensively fished area by the Oregon Inlet charter boats, private recreational and commercial bluewater fleet. The area's reputation for large blue marlin has prompted several local billfish tournaments. The fishing industry may be affected by space use conflicts, both from drillship activities and increased vessel traffic.[70] The drillship will be in place for approximately 114 days between May and October. This time period coincides with much of the fishing season. FER at IV-217. During this time period there could be as many as 100-125 boats engaged in fishing near The Point and the drill site.[71]

In commenting on this appeal, Federal agencies differed in their assessment of the potential effects on the fishing industry. MMS concludes that impacts on the fishing industry are expected to be low. FER at IV-219. MMS stated that interference from the placement of drillship anchors would be minimized by the placement of surface buoys and a notice to mariners. MMS Comments at 38. MMS also concluded in its FER that interference from

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[69] The fourth part of the State's proposed study would be documentation of the commercial and recreational fishing in the vicinity of the drill site and The Point. This part of the study would be accomplished by surveying commercial and recreational fishermen on specific days upon returning to various ports in North Carolina. The information obtained, along with some field data, would be used to document the importance of the area as a fishery.

[70] *See also* discussion, *supra* at 24.

[71] Testimony of John Bayless, Oregon Inlet Sportfishing Guides Association (State Exhibit 26-A).

support vessel traffic would be minimal. *See* FER at IV-242-243.

I agree that the space use impacts will be temporary in that they are scheduled to last for about 114 days. There is unrefuted evidence that the fishing industry seasonally concentrates near the drill site, however, indicating that there will be a high likelihood of impacts. I find, however, that the potential extent of those space use impacts will be minor given that Mobil plans to drill only one exploratory well. In evaluating the information in the record, I therefore find that the information is adequate for me to conclude that the space use impacts upon the fishing industry will be minor.

The ESRP concludes that, in general, socioeconomics is the most neglected area in the primary documents dealing with exploratory drilling at the Manteo site. *See* ESRP Report at 58. The ESRP made a number of general comments on the inadequacy of existing socioeconomic information. *See* ESRP Report at 59-60. Furthermore, the ESRP recommends that a base case characterization analysis, community studies, studies on aesthetic and perceptual issues, studies on infrastructure, and a socioeconomic monitoring study should be initiated as soon as possible, especially since these studies were not done at the leasing phase. *See* ESRP Report at 61-63.

Upon reviewing the information in the record of this appeal, I am unable to adequately identify the extent of the individual and cumulative adverse socioeconomic effects resulting from Mobil's proposed activity. Given that this is a frontier area and an area of rich natural resources upon which the State heavily depends, socioeconomic impacts must be more fully addressed.

Conclusion on Adverse Effects

I have evaluated the information in the record on adverse effects of Mobil's proposed drilling discharges on the natural resources and uses of the State's coastal zone. I found that the planned drilling discharges will have adverse effects on the resources and uses of the State's coastal zone. In particular, I found that the proposed discharges will affect the benthic environment, which is linked to the State's fisheries. Moreover, based on a review of the record, I have identified informational concerns sufficient that I am unable to adequately assess the risk of impacts of Mobil's proposed activity, and so, I am unable to adequately identify the individual and cumulative adverse effects of Mobil's proposed activity.

I note that the NRC stated in its 1989 report that "[t]he basic information needed to make a leasing decision anywhere includes a characterization of the environment, identification of the biological resources at risk, and a basic understanding of ecological relationships." NRC 1989 Report at 5. Even at this post-leasing stage, I find that Mobil has not adequately documented the biological resources or ecological relationships at risk. While the overall likelihood of impacts may be low, to say that the models of a worst case scenario obviate the need to understand any ecological relationships between the State's fish resources and the *Sargassum* or benthic communities is too facile an explanation for me to accept, given that the potential extent of impacts may be high.

Furthermore, the 1989 NRC report indicates that where unique habitats and endangered and rare species exist, more extensive characterization of the sensitivity of biota to OCS-related activities, characterization of recovery rates, and identification of mitigating measures is needed. NRC 1989 Report at 5. I am persuaded that the biological

resources of the drill site area are sufficiently rich and unique to merit further investigation. I am also persuaded that the fisheries located at the site are an important part of the State's coastal zone, and that there may be potential risks of contamination of sensitive fish larvae. I find that Mobil has not adequately accounted for the effects of reasonably foreseeable effects resulting from increased currents or adverse weather conditions. I am persuaded that the ecological relationship of the benthic environment to the State's fisheries must be further assessed in order to adequately evaluate the risk of impact of Mobil's proposed activities. Finally, I find that Mobil has not adequately assessed the risk of its impacts on the socioeconomic uses of the State's coastal zone.

b. *Contribution to the National Interest*

The national interests to be balanced in Element 2 are limited to those recognized in or defined by the objectives or purposes of the CZMA. *See* Korea Drilling Decision at 16. Since our national interests are not static, however, the Secretary has noted that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by the Federal agencies. *See* Decision and Findings in the Consistency Appeal of Union Oil Company of California, (Union Decision), November 9, 1984, at 15. These sources of information can assist the Secretary in determining the current national interest in a proposed project.

I conclude that the national interest contribution of Mobil's proposed drilling discharges is minimal.

Energy self-sufficiency through oil and gas production is a recognized goal of the CZMA and the Secretary has previously held that it furthers the national interest under this Element. *See* Exxon SRU Decision at 11. Moreover, the record of this appeal indicates that energy self-sufficiency continues to be in the national interest. Of those Federal agencies that commented on the issue of the national interest in the Appellant's proposed activity, most expressed support for domestic energy projects. The DOI states that "[s]uch an important discovery, as the Manteo Prospect may represent, is an essential component in maintaining our self-sufficiency in clean burning, environmentally safe natural gas." DOI Comments. In § 6003 of the Oil Pollution Act of 1990, however, Congress found that the Outer Banks is an area of "exceptional environmental fragility and beauty" and that there are concerns about the adequacy of the scientific and technical information underlying oil and gas exploration decisions in this area. *See* 33 U.S.C. § 2753(b). Based upon a review of the record, I find that there is a national interest in the *informed* exploration for natural gas resources at this site. Potential risks must be fully evaluated.

The State argues, however, that the national interest issue is limited by the scope of the activity, and that Mobil's drilling proposal is not the subject of this appeal. State's Initial Brief at 6-7. I agree. However, Mobil's proposed discharges are a part of Mobil's drilling proposal, and a portion of the national interest contribution of the proposed one-well OCS exploration can be imputed to Mobil's proposed drilling discharges.

In order to perform the required balancing for Element 2, I must also identify the *extent* of the activity's contribution to the national interest. To identify the extent of the national interest contribution of Mobil's one-well drilling

proposal, in this case, I will consider the potential size and likelihood of natural gas recovery as well as the degree to which the proposal is based on informed decision-making, such that potential risks have been fully evaluated.[72] As evidenced by comments from MMS and the DOI, exploration could result in the recovery of five trillion cubic feet of natural gas.[73] I find that there is a potential for a large discovery.[74] The State requests that I consider the lack of in-place infrastructure when taking into consideration the probability that natural gas can be recovered at the site. State's Final Brief at 46. Given that I have found that if natural gas is discovered it will probably be in a large amount, I find that the size of the discovery will outweigh the costs of bringing the natural gas to market. As to the likelihood of a natural gas discovery, in its comments on this appeal, MMS has stated:

> Without a discharge permit, even drilling a single exploratory well on the Manteo Prospect, with estimates of hydrocarbon resources as great as 1 billion barrels of oil equivalent in the form of 5 trillion cubic feet (tcf) of natural gas, would have to be questioned given that *the chance of encountering hydrocarbons is only 10 percent or less.* (Emphasis added.)

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72 The parameters influencing contribution to the national interest will depend on the facts of each case.

73 MMS geologists characterize the five trillion cubic feet estimate as optimistic. FER at II-6.

74 While the estimated potential hydrocarbon reserve would be found under approximately 21 lease blocks, Mobil's POE covers only one well in one lease block. *See* Mobil's Initial Brief at 8; Mobil's POE, vol. 1 at A1-4, A1-9. The MMS states that production of five trillion cubic feet of natural gas would involve the drilling of approximately 103 wells. FER at IV-13.

MMS Comments at 8. Accordingly, there is a 90 percent chance that no hydrocarbons will be found, a small likelihood of discovery.

Informed exploration is in the national interest, however, even if there is no discovery of hydrocarbons.[75] In this case, pursuant to § 6003 of the Oil Pollution Act in which Congress noted the importance of informed decision-making in this area, the ESRP concluded that adequate information is lacking for even an informed leasing decision, let alone an informed decision to explore. I therefore find that Mobil's drilling proposal contributes less to the national interest because it contains informational deficiencies as identified by the ESRP.

Above, I found that the potential size of the discovery is large. However, there is a 90 percent chance that no hydrocarbons will be discovered at the site and that Mobil's drilling proposal contributes less to the national interest because it contains informational deficiencies as identified by the ESRP. Based upon a review of the record, I find that Mobil's proposed one-well OCS exploration would make a minor contribution to the national interest.

The activity at issue in this case, however, is Mobil's proposed discharges. Based upon a review of the record, I find that the proposed discharges are a small part of Mobil's overall one-well exploration activity at Manteo Area Block 467, and that these discharges contribute proportionately less to the national interest than does Mobil's drilling proposal. In considering these factors I now find that Mobil's proposed discharges contribute minimally to the national interest.

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75 Whether or not gas will be discovered, the exploration itself furthers the national interest by ascertaining information on available hydrocarbon reserves. *See* Texaco Decision at 30-31; Amoco Decision at 45.

c. *Balancing*

I have evaluated the information in the record on adverse effects of Mobil's proposed drilling discharges on the natural resources and uses of the State's coastal zone. I found that the planned drilling discharges will have adverse effects on the resources and uses of the State's coastal zone. In particular, I found that the proposed discharges will affect the benthic environment, which is linked to the State's fisheries. Moreover, based on a review of the record, I have identified informational concerns sufficient that I am unable to adequately assess the risk of impacts of Mobil's proposed activity, and so, I am unable to adequately identify the individual and cumulative adverse effects of Mobil's proposed activity.

I have evaluated the information in the record on the contribution of the proposed activity to the national interest. I found that the proposed discharges contribute to the national interest by furthering Mobil's one-well exploration plan. I found, however, that the national interest contribution of Mobil's proposed drilling discharges is minimal.

Because I cannot adequately identify the extent of the individual and cumulative adverse effects of the proposed activity, I am unable to perform the required balancing of the adverse effects against the contribution to the national interest. Consequently, I cannot find that the national interest benefits of Mobil's proposed activity outweigh the proposed activity's adverse effects on the State's coastal resources and uses.

3. *Element 3: Activity Will Not Violate The Clean Water Act or the Clean Air Act*

To satisfy the third Element of Ground I, I must find that "[t]he activity will not violate any of the requirements

of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended." 15 C.F.R. § 930.121 (c). The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated into all State coastal programs approved under the CZMA § 307(f). I conclude that the activity meets the requirements of the Clean Water Act and the Clean Air Act, and therefore satisfies Element 3 of Ground I.

a. *Clean Water Act*

Sections 301(a) and 402 of the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. §§ 1311(a) and 1342, provide that the discharge of pollutants is unlawful except in accordance with an NPDES permit issued by the EPA. Mobil submitted its application for an NPDES permit to the EPA on August 18, 1989.

EPA must prescribe appropriate terms and conditions in an NPDES permit for discharges associated with OCS activities. In its comments on this appeal, EPA stated:

> Compliance with all conditions of the NPDES permit, if consistency is resolved and the permit issued, would meet the requirements of the Clean Water Act applicable to point source discharges. Therefore, assuming that Mobil will not discharge until they have obtained a permit, the project will not be in violation of the Clean Water Act, as amended.

EPA Comments. EPA has confirmed in its comments in earlier override appeals that an OCS facility operated in compliance with an NPDES permit would satisfy the requirements of the CWA. *See, e.g.*, Korea Drilling Decisions at 10. Conversely, a project not operating in compliance with the terms of an NPDES permit would not meet the requirements of the CWA applicable to point source discharges.

In spite of Mobil's statements to the contrary,[76] Mobil cannot lawfully conduct its proposed activity without meeting the terms and conditions of an NPDES permit, thus meeting the standards of the Clean Water Act. Therefore, I find that Mobil's proposed activity will not violate the requirements of the Clean Water Act.

b. *Clean Air Act*

Sections 108 and 109 of the Clean Air Act, as amended (CAA), 42 U.S.C. §§ 7408 and 7409, direct the EPA to prescribe national ambient air quality standards (NAAQS) for air pollutants to protect the public health and welfare. Pursuant to CAA § 110, 42 U.S.C. § 7410, each state in turn is required to develop and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state.

Mobil states that due to the distance of the drill site from the nearest land, the onshore effects of drilling emissions are negligible, and that emissions from both the onshore and offshore facilities are estimated in accordance with EPA standards and guidelines.[77] Mobil's Initial Brief at 46; Mobil's Final Brief at 38. The State has commented that "[s]ince Clean Air Act issues have not been raised in this appeal, the Secretary's attention should be devoted to whether Mobil has established in the record that its proposed drilling discharges will not violate any require-

[76] Mobil has stated that the proposed cadmium and mercury limits would present serious compliance problems, and that these limits cannot be consistently achieved. *See* Mobil Exhibit 18 at 58.

[77] 30 C.F.R. § 250.33(a). Total estimated emissions from both the onshore and offshore facilities fall below the calculated regulatory exemption levels set forth in 30 C.F.R. § 250.45. Mobil's POE, vol. 1 at B19-1—B19-6.

ments of the Clean Water Act." State's Initial Brief at 35. In its comments on this appeal, EPA states that the onshore impact would not violate any current requirements set under the Clean Air Act.[78] Based upon a review of the record, I find that Mobil's proposed marine discharge activities under an NPDES permit will not violate the CAA.

4. *Element 4: No Reasonable, Consistent Alternatives Available*

To meet the requirements of the fourth Element of Ground I, I must find that "[t]here is no reasonable alternative available (*e.g.*, location, design, etc.) which would permit the activity to be conducted in a manner consistent with the [state's coastal] management program." 15 C.F.R. § 930.121(d). For state objections based on 15 C.F.R. § 930.64(b), the fourth Element of Ground I is usually decided by evaluating the alternative(s) proposed by a state in the consistency objection. *See* Chevron Decision at 58; LILCO Decision at 16. In this case, however, the State's objection to Mobil's proposed drilling discharges is based on a lack of information necessary to determine the consistency of the activity. *See* 15 C.F.R. §§ 930.64(d).

I find that there is no reasonable, available alternative to Mobil's proposed drilling discharges which would permit Mobil to conduct the activity in a manner consistent with the State's coastal management program.

In terms of alternatives, § 930.64(d) imposes different requirements upon a state than does § 930.64(b)(2).

[78] Letter from Richard E. Sanderson, Director, Office of Federal Activities, Environmental Protection Agency, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, December 14, 1990 (EPA Comments).

Under § 930.64(d) "the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management pogram."[79] Unlike § 930.64(b)(2), § 930.64(d) does *not* require a state to describe in its objection "alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program." If a state lacks information necessary to assess a proposed activity, it would likely lack information necessary to assess possible alternatives to an activity.

Nevertheless, in this case the State indicated in its objection letter that the only alternative available is for Mobil to provide the information needs identified in the proposed four-part fisheries study. State Objection Letter. The State continued: "Should Mobil subsequently provide the required information, the State will then be in a position to review the proposed activity to determine whether it may be conducted in a manner consistent with North Carolina's Coastal Management Program." State Objection Letter. Since the information is allegedly necessary to a consistency determination, however, the State cannot determine the probable consistency of the activity prior to the submission of the information by Mobil. I find that the State's suggested alternative of a four-part fisheries study is not a reasonable alternative available which would permit the activity to be conducted in a manner consistent

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79 Section 930.64(d) does not require the Appellant to first gather information on reasonable alternatives for presentation to the State for a probable consistency determination, as suggested by the State. *See* State's Initial Brief at 38. It would be incongruous to require an Appellant to provide evidence of a reasonable alternative to a State, only to require the Appellant, on appeal, to prove the unreasonableness of the alternative.

with the State's coastal management program because there is no indication by the State of the probable consistency of Mobil's proposed activity upon submission of the additional information. *See also* Chevron Decision at 51.

In reviewing the record of this appeal, I have identified two possible alternatives that may be reasonable and available. First, in its briefing for the appeal the State argues that a no-discharge NPDES permit is a reasonable alternative that could allow exploratory drilling to go forward while additional information is gathered through monitoring studies. State's Initial Brief at 39. The State asserts, however, that the consistency of this alternative would depend on identification of a suitable disposal site. State's Initial Brief at 39. The barging proposal therefore fails to qualify as an alternative because the State does not indicate whether barging would probably be consistent with the State's CMP since the proposal's consistency is dependent upon identification of a suitable disposal site. Second, the State makes a reference in its initial brief to possible relocation of Mobil's drilling site. State's Initial Brief at 39. The State claims, however, that "without additional information on the biological resources located in other potential discharge areas, acceptable alternative sites cannot presently be properly evaluated." State's Initial Brief at 39. The possible relocation of Mobil's drilling site fails to qualify as an alternative for two reasons. First, the description is too general in nature since the State did not identify the location of an alternative site. *See* Texaco Decision at 36; Korea Drilling Decision at 24. Second, the State does not indicate whether an alternative site would probably allow Mobil to conduct drilling discharges consistent with the State's CMP.

The record for this appeal discloses no reasonable, available alternatives. If such alternatives existed, the State

would likely offer them even though not required to do so for objections made pursuant to 15 C.F.R. § 930.64 (d). Element 4 requires that alternatives be consistent with state CMPs, and a state is in the best position to evaluate the consistency of a possible alternative. Therefore, based on the record before me, I find that there is no reasonable, available alternative to Mobil's proposed drilling discharges which would permit Mobil to conduct the activity in a manner consistent with the State's coastal management program.

Conclusion for Ground I

Based on the findings above, I find that Mobil has not satisfied the second Element of Ground I. Therefore, Mobil's proposed drilling discharge activity is not consistent with the objectives or purposes of the CZMA.

B. *Ground II: Necessary in the Interest of National Security*

I conclude that the proposed activity is not necessary in the interest of national security.

The second statutory ground for an override of a state's objection to a proposed activity is based on a finding that an activity is necessary in the interest of national security. To make this determination I must find that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." 15 C.F.R. § 930.122.

Again, it is important to identify the scope of the activity; it is the discharge of drilling wastes, a part of Mobil's proposed one-well OCS exploration for natural gas. As with the contribution to national interest, part of the contribution of Mobil's OCS gas exploration to the national

security can be imputed to Mobil's proposed drilling discharges.

Mobil asserts that decreased reliance on oil imports contributes to the national defense and national security and that exploration is a necessary step in the development of new domestic reserves. Additionally, Mobil contends that there are few large oil and gas reserves to be found,[80] and that the size of the potential natural gas reserve in this area would make it exploration important for national security reasons. Mobil's Final Brief at 62.

In order to decide this ground, I will give considerable weight to the views of the Department of Defense (DOD) and other Federal agencies. 15 C.F.R. § 930.122. In soliciting the views of several Federal agencies, the Deputy Under Secretary asked those agencies to identify any national defense or other national security objectives directly supported by Mobil's drilling discharge activities, and to indicate which of the identified national defense or other national security interests would be significantly impaired if Mobil's activity were not allowed to go forward as proposed.

The DOD responded by stating that even if five trillion cubic feet of natural gas are found,

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[80] I agree with Mobil that our nation's security interests are not static. *See* Mobil's Initial Brief at 65. I note, however, that our nation's concern for energy independence from foreign sources of oil has been longstanding, as exemplified by President Nixon's announcement on November 7, 1973, of "Project Independence.' *See* 9 Compilation of Presidential Documents 1309 (1973), *cited in State of Alaska v. Andrus*, 580 F.2d 465, 467 n.1 (D.C. Cir.), *vacated in part sub nom, Western Oil & Gas Assoc. v. State of Alaska*, 439 U.S. 922 (1978). Moreover, the Secretary has previously held that the size of oil and gas reserves is not determinative of whether the requirements of this ground are met. The degree of importance the Secretary assigns the size of oil and gas reserves in deciding whether interests are significantly impaired depends on the facts of the case. Chevron Decision at 71.

> it is not possible to establish a direct impact on the Department of Defense (DoD) (Ground II) from a natural gas exploration project. Therefore, DoD is unable to identify a basis for a determination that the national defense or national security interest would be significantly impaired if the proposed consistency certification were not granted.[81]

Mobil discounts the DOD comments by stating that DOD misunderstood the grounds for a Secretarial override. Mobil's Final Brief at 57, n.60. Nevertheless, I interpret DOD's comments to mean that in the opinion of DOD, national security interests would not be significantly impaired if the project were not allowed to go forward as proposed.

Other Federal agencies support the general proposition that OCS exploration contributes to national security interests. The DOE stated that "[p]roducible oil and gas reserves in the Atlantic Outer Continental Shelf (OCS) can help this country replace imports, thereby meeting both energy and economic security and national defense goals. However, when environmentally benign exploitation such as that proposed by Mobil is blocked, this option is lost." DOE Comments. The DOE continues:

> Neither our domestic nor foreign policy should be subject to the availability of imported oil especially when the opportunity exists to develop domestic natural gas resources that can replace important [sic] oil. Consequently, we believe that this project is necessary in the interest of national security.

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[81] Letter from Diane K. Morales, Deputy Assistant Secretary (Logistics), Department of Defense, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, November 27, 1990.

Id. The NSC stated that it is in the national security interest to increase domestic oil production where such production is economic and consistent with environmental procedures.[82] The Department of the Treasury recognizes significant benefits to national security from domestic energy resources.[83] The DOI states that there is a direct relationship between national security and the success of the Federal program to develop offshore energy resources. DOI Comments. I find that none of these comments specifically address how these interests would be "significantly impaired" if Mobil's proposed marine discharge of drilling wastes is not allowed to proceed "as proposed."

MMS commented, however, that denial of an NPDES permit application for Mobil's proposed drilling discharges "could well foreclose any possibility of future oil and gas exploration in frontier areas of the OCS." MMS Comments at 63; *see also* MMS Comments at 9. MMS also commented:

> Prohibition of the proposed activity would result in a *direct and significant impairment* of the potential for discovery of a *natural gas field of such magnitude* that national security and defense concerns could be *significantly* compromised.

MMS Comments at 65 (emphasis in original). I decline to give much weight to MMS' comment on significant impairment, however, because its comment appears to be based on speculation that denial of this NPDES permit

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[82] Memorandum from William F. Sittmann, Executive Secretary, National Security Council, to Michael P. Skarzynski, Chief of Staff, Department of Commerce, December 11, 1990.

[83] Letter from Bruce R. Bartlett, Deputy Assistant Secretary, Office of Economic Policy, Department of the Treasury, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, November 13, 1990.

application could well foreclose any possibility of future oil and gas exploration in frontier areas of the OCS. The record of this appeal does not disclose that this case is a referendum on future oil and gas exploration in frontier areas of the OCS.

Conclusion for Ground II

Since Mobil's proposed discharges are a part of Mobil's proposed one-well exploration, a portion of the national security value of the exploration may be imputed to the discharges. However, I find that the comments of the Federal agencies fail to persuade me that a national defense or other national security interest would be significantly impaired if Mobil were not permitted to discharge its wastes as proposed. Therefore, based on the record before me, I now find that the requirements for Ground II have not been met.

V. CONCLUSION AND SCERETARIAL DECISION

I have found that Mobil's proposed discharges of drilling wastes are neither consistent with the objectives of the CZMA nor necessary in the interests of national security. Accordingly, I decline to override North Carolina's objection to Mobil's proposed discharges of drilling wastes.

/s/ David Barr
for Ronald H. Brown
Secretary of Commerce

September 2, 1994

[DOI Logo]

UNITED STATES DEPARTMENT OF THE INTERIOR

MINERALS MANAGEMENT SERVICE
Gulf of Mexico OCS Region
1201 Firewood Park Boulevard
New Orleans, Louisiana 70125-2394

Nov. 9, 1994

In Reply Refer To: MS 5322

Mobil Exploration & Production U.S. Inc.
Attention: Ms. Leslie J. Burton
1250 Poydras Plaza
New Orleans, Louisiana 70113-1892

Gentlemen:

Pursuant to Minerals Management Service (MMS) letter dated October 9, 1992, a suspension of operations (SOO) was issued for the 21 leases in the Manteo Unit, Agreement No. 752-290001-0, offshore North Carolina. The letter states that the SOO will expire when the two studies recommended by the Environmental Sciences Review Panel have been accepted by the MMS and when the U.S. Department of Commerce renders a decision on the appeals from the State of North Carolina's Denial of Consistency Certification on the Exploration Plan and the NPDES Permit.

By letter dated July 22, 1994, the MMS transmitted the two aforementioned studies to the Department of Commerce, and on September 2, 1994, the Secretary of Commerce issued a decision upholding North Carolina's objection to your proposed Exploration Plan. This letter provides formal notice that the suspensions for the 21 leases in the Manteo Unit are hereby terminated.

Rental payments for the 21 leases will be calculated from November 10, 1994. The terms of the leases will be extended for a period of time equal to the period the suspension was in effect (30 CFR 250.10(f)). The leases and the new expiration dates are as follows:

Lease	Date	Lease	Date
00225	11/9/96	00236	11/9/96
00226	11/9/96	00237	11/9/96
00227	11/9/96	00238	11/9/96
00228	11/9/96	00239	11/9/96
00229	11/9/96	00240	11/9/96
00230	11/9/96	00242	11/9/96
00231	11/9/96	00243	11/9/96
00232	11/9/96	00244	11/9/96
00233	11/9/96	00446	11/24/97
00234	11/9/96	00448	11/24/97

If you have any questions, please call Mr. Ralph Melancon at 736-2675.

Sincerely,

/s/ Chris C. Oynes
CHRIS C. OYNES
Acting Regional Director

[Filed Jul. 24, 1997]

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

(Caption Omitted in Printing)

JUDGMENT
[Pursuant to Rule 54(b)]

Pursuant to the court's Order Directing Entry of Partial Judgment and Memorandum Concerning Final Pre-Trial Conference, filed July 18, 1997, stating that there is no just reason for delay and directing the entry of judgment, as provided for in Rule 54(b),

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that partial judgment is is [sic] entered in favor of the plaintiff MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC. in the amount of $78,257,565.00. Pursuant to RCFC 54(d), costs shall be allowed to said plaintiff ("the prevailing party").

DAVID A. LAMPEN
Clerk of Court

By: /s/ [Illegible]
Deputy Clerk

July 24, 1997

[Filed Jul. 24, 1997]

IN THE UNITED STATES COURT
OF FEDERAL CLAIMS

(Caption Omitted in Printing)

JUDGMENT

Pursuant to the court's Order Directing Entry of Final Judgment, filed July 18, 1997.

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 54, that judgment is entered in favor of plaintiff, MARATHON OIL COMPANY, in the amount of $78,242,368.59. Pursuant to RCFC 54(c), costs shall be allowed to said plaintiff ("the prevailing party"). [As all other counts in this civil action have been addressed, present judgment, now entered on the above captioned plaintiffs, concludes this litigation.]

DAVID A. LAMPEN
Clerk of Court

By: /s/ [Illegible]
Deputy Clerk

July 24, 1997